United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,

Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume VII—Pages A-4081 to A-4760

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is that right?

A Yes, sir.

Q And this Dale Bellamah Company very recently has made a substantial investment in development at Taylor Ranch?

A Yes.

Q And they are building homes there?

A Yes.

Q Do you know that the intended investment on Taylor Ranch over the next ten years will be approximately $150 million?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A I don't know that, sir.

Q Do you have any idea what the present investment in Taylor Ranch is?

A Not investment, no, sir.

Q I take it you have no idea what the intended investment in Taylor Ranch is?

A No.

Q Now I want to show you Prosecution Exhibit 663 (handing).

This is the letter dated August 22, 1967 from Mr. Walker to Rio Rancho Estates, is that correct?

A Yes, sir.

Q If you read with me, the third paragraph, "Until such time when the overall residential picture on the west side improves from the standpoint of continuing market interest for existing as well as new construction and major employment enterprises are established near most developments, the risk remains too great for FHA mortgage insurance. Your subdivision proposal is not eligible for FHA participation for reasons stated," et cetera.

Is that correct?

A That's correct.

Q And that was in 1967, am I right?

A Right.

end t

Q Am I also correct that over the past four years FHA has begun to finance homes in Rio Rancho?

A Existing construction.

Q That is my question. They have been lending or guaranteeing or lending money on existing construction in Rio Rancho, is that right?

A Yes.

Q That has begun over the last three or four years, is that correct?

A That is correct.

Q Am I correct that up through or as of November 1, 1970, the most significant building, construction in the Albuquerque area had been in the northeast portion of the city and Rio Rancho Estates to the north in Sandoval County?

A Yes.

Q That was as of November 1, 1970, right?

THE COURT: You are shaking your head. It does not help the court reporter.

A I know it doesn't, sir, but the question bothers me a little bit.

THE COURT: He says the question bothers him.

MR. FLEMING: I hope so.

A May I answer?

THE COURT: Don't look at me, look at Mr. Fleming. He is asking the questions, I am not.

MR. FLEMING: Can I have the question read back?

A You said the northeast heights of Albuquerque and --

Q Rio Rancho.

A And Rio Rancho. I can speak for FHA and --

THE COURT: That isn't what he is asking you.

THE WITNESS: I know.

THE COURT: We are not interested in anything you want to say aside from the answer to the question.

THE WITNESS: I will answer, yes.

Q That was as of November 1, 1970, right?

A Yes.

Q Let me ask you this question:

Has construction in northeast Albuquerque since November 1970 increased 900 percent?

THE COURT: Over what?

Q Over what it was as of November 1, 1970?

A I don't think it has increased 900 percent.

Q What do you think the percentage increase in the northeast has been since November 1, 1970?

A I say it has doubled.

Q One hundred percent increase, is that right?

A Yes, sir.

Q Now, the FHA, could you explain to me what does -- does the FHA actually give mortgage money or does it guarantee mortgage money?

A It guarantees mortgage money.

Q In Albuquerque, has the FHA experienced -- withdrawn.

In certain portions of the country does the FHA give mortgage money or is it a purchase guarantee program?

A The FHA is a purchase guarantee program.

Q That means that we will say a bank hypothetically will lend the money to a person who wants to build or buy a home if the FHA guarantees that upon default of the borrower to the bank, the FHA will make the bank good in whole or in part?

A Yes.

Q What percentage of the obligation does the FHA guarantee?

MR. KAUFMAN: Objection, your Honor. I was prevented from going into this on direct.

THE COURT: Sustained.

Q Does the FHA -- is your office in New Mexico, you work for the New Mexico office?

A Yes.

Q Is your office in New Mexico, does it have a budget ?

A Yes.

Q Does it keep a reserve to guard against payment in the event of default?

A No.

MR. KAUFMAN: Objection, your Honor.

THE COURT: He has already answered.

MR. KAUFMAN: Object to the whole line.

THE COURT: I don't know what the line is yet.

Q Does the FHA nationally keep a reserve to make payment in the event of default by borrowers to banks?

MR. KAUFMAN: I object.

THE COURT: Sustained.

MR. FLEMING: I have a theory of relevance.

THE COURT: You had better come over here and tell me.

MR. FLEMING: All right.

(At the side bar)

MR. FLEMING: Mr. Hoffinger said I had better make it good, your Honor.

The basis is this: I believe there seems to be implicit, for example, in the Jencks material which I have read, grand jury testimony there appears to be the possible --

MS. HYNES: There is no grand jury testimony of this witness.

MR. FLEMING: There appears to be the strong possibility that the government is going to argue that the Rio Rancho development is fraudulent because if everyone had come in that wanted to build a house all at once, Rio Rancho would not have been in a position to get the utilities to all of the various lots.

Now, of course the probability of everyone coming in and asking to build all the lots at once is obscure at least in my view.

I would just like to prove through this witness that the FHA has actuarial tables, does not expect default on the part of all those persons whose loans they guarantee and therefore is not funded to make payment to all the banks who would be injured by all such default if all default occurred at once.

MR. KAUFMAN: The FHA only guarantees

individual home mortgages. How does that relate to the whole subdivision? I don't understand how his point relates to FHA mortgage insurance.

THE COURT: Wasn't he introduced to get approval for a whole development of Rio Rancho?

MR. KAUFMAN: The FHA was saying that it wouldn't consider even approving individual houses at Rio Rancho because of the remoteness and other territorial aspects of the property.

Mr. Fleming seems to be arguing that using FHA actuarial tables they will be able -- he will be able to argue that the FHA presumably did not anticipate a default on the part of all the mortgagees at Rio Rancho.

MR. FLEMING: No.

MR. KAUFMAN: The FHA doesn't insure the entity of Rio Rancho. It only insures each individual house when it comes on the market so if it insures a particular house, I don't see how the fact that there are enough building lots to accommodate all the other lots in the Rio Rancho subdivision is at all relevant.

THE COURT: Objection sustained.

MR. FLEMING: Judge, that is not my point.

THE COURT: I know your point. Sustained.

(In open court)

BY MR. FLEMING:

MR. FLEMING: Mr. Neiswander, the objection has been sustained and I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Neiswander, you recall being asked about appraisals that the FHA has done at Rio Rancho Estates and you testified appraisals were done and broken down and by lot it came down to $60 per month foot?

A Yes.

Q Do you know what sections of Rio Rancho Estates those appraisals were done at?

A I think in Corrales Heights or perhaps the other sections, I don't recall.

MR. ARKIN: Move to strike.

THE COURT: Sustained.

Q When you say you think, Mr. Neiswander, is that your best information that it was at Corrales Heights?

MR. FLEMING: Objection.

THE COURT: Sustained. He says he thinks it could be others.

Q Were those appraisals done in developed portions of Rio Rancho Estates?

A Yes.

Q Have you ever appraised undeveloped land at Rio Rancho Estates?

A No.

Q Do you remember you were asked by Mr. Fleming whether or not you would agree with the statement that most construction in Albuquerque had taken place in the northeast section of the city and Rio Rancho Estates?

A Yes.

Q You had some trouble with that question.

Can you elaborate on your answer to that question?

MR. FLEMING: You mean about his trouble? I object to it, your Honor.

THE COURT: Overruled.

A It is difficult for me to break down in my mind the percentage of development during that period. I know that most of the development was taking place in the northeast heights. I am not entirely sure of how much was taking place in Rio Rancho.

I do know it was active and, therefore, I must say yes.

Q Talking in terms of absolute growth rather than percentage growth, where was the most absolute growth in Albuquerque, in the Albuquerque area?

A Northeast Heights.

Q Would it have been an accurate statement to make in the middle and late 1960's that Albuquerque could only grow in one direction and that direction was to the northwest?

MR. ARKIN: Objection, improper redirect.

THE COURT: Sustained.

Q Do you recall Mr. Fleming asking you about a development on the west mesa called Taylor Ranch?

A Yes.

Q He asked you whether or not Taylor Ranch was approximately 1,000 acres, do you recall that?

A Yes.

Q Are you aware that the development planned for Taylor Ranch is a ten year development plan?

A I don't know the length of time. It is a long term plan.

Q Taylor Ranch is closer to Albuquerque than Rio Rancho, is that right?

A Yes.

MR. KAUFMAN: I have no further questions, your Honor.

MR. FLEMING: May I ask one, your Honor?

THE COURT: One.

RECROSS EXAMINATION

XXX

BY MR. FLEMING:

Q Mr. Neiswander, you say the greatest absolute growth over the past ten years has been in the northeast.

Am I correct that the greatest percentage growth has been on the west mesa?

MR. KAUFMAN: Your Honor, that has been asked and answered.

THE COURT: Sustained.

You are excused.

(Witness excused)

MR. DEVORKIN: The government calls Chuck Woodward.

CHARLES WOODWARD, called as a witness by the Government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

XXXXX

BY MR. DEVORKIN:

Q Mr. Woodward, how are you currently employed?

A By Lockwood, Kessler & Bartlett in New York.

Q How long have you worked for Lockwood, Bartlett

& Kessler?

A About fifteen years.

Q What kind of work do they do?

A We are consulting engineers and do aerial photography and mapping.

Q Just to make it a little bit easier, why don't I refer to them as LKB.

A Fine, that is what we normally do.

Q Those are your initials?

A Lockwood, Kessler & Bartlett. Our logo is LKB and we are known as that.

Q How large a company is that?

A About 300 at present.

Q Is it a publicly held corporation?

A Yes, sir.

Q Where are your offices located?

A The main office is in Syosset where I am employed and we have other offices in Rochester, Weston, Virginia, Puerto Rico, Philadelphia, California.

Q You say you do aerial photograph work?

A Yes,sir.

Q Who has LKB done aerial photography work for?

A Oh boy, the list is endless.

MR. FLEMING: I object to that.

THE COURT: Strike the "endless". Sustained.

Q Give us some examples.

A The Core of Engineers, United States Navy Department, United States Geological Survey, State of New York, State of Massachusetts, City of New York.

Q Are you also a pilot?

A Yes, sir.

Q Commercial pilot?

A Yes, I am rated commercial pilot, single and multi-engine.

Q What is your position with LKB?

A Director of Photography.

Q What are you duties?

A To direct any photographic operations including photo lab in flight.

Q How long have you done that kind of work for LKB?

A About half of the time that I have been there, say seven years roughly.

Q Before that?

A I started over in the photographic department as a technician.

Q Before working for LKB what kind of work did you do?

A I was an aerial photographer in the Marine Corps and then when I got out I did commercial photography for a few years and then I went back into aerial photography with LKB.

Q How long did you do aerial photography in the Marine Corps?

A Three years.

Q Was that in the United States or overseas?

A Both.

Q What kind of aerial photography have you personally participated in?

A I would say all kinds, vertical, oblique, picturesque, mapping, I have been exposed to just any type.

Q Were you involved in any professional societies related to aerial photography?

A Yes, sir.

Q Which ones?

A The main one, the American Society of Photogrammetry, which is a national society.

Q What position do you hold with that society?

A I am the vice-president of the North Atlantic Region.

Q Who is the president of the national society?

A John Wickham.

Q Where does he work?

MS. CROSS: Your Honor, I object. I don't see the relevancy.

THE COURT: Sustained.

Q Are you familiar with the aerial photography work done by or for the United States Geological Survey?

A Yes, sir.

Q Have you ever done it yourself?

A Yes.

Q How often?

A Maybe twenty jobs.

Q How does one go about getting a job with Geological Survey to do aerial photography?

MR. FLEMING: Objection.

THE COURT: Overruled.

A It is something that is published in a newspaper or magazine that people like ourselves would have access to and we would submit a proposal or a bid and they would aware it to the lowest qualified bidder.

Q Do you have to have any kind of special equipment or qualifications to bid on a Geological Survey project?

A Yes, sir.

Q What are those?

A You have got to be accepted -- you have got to be on their list in the first place. Your cameras have to be calibrated, your photolab equipment has to be calibrated. In other words, you must show them proof that you can complete the job to the specifications that they require.

Q Are you familiar with their specifications?

A Yes, sir.

Q Generally speaking, what are they?

A They mostly pertain to accuracies of the cameras and the final products. There is a list of corrections that should be made.

Q Can you tell us what the accuracy of the cameras and lenses is that they require?

A It isn't something that you could explain, but there is a calibration certificate and you must submit the camera to the United States Geological Survey. They calibrate it and they refer to microns of error. It is something you cannot even see with your eye. It must be highly accurate.

Q You submitted the camera to the Geological Survey or someone else?

A It depends on the job, the Geological Survey or the National Bureau of Standards. They do the same type of calibration and I think one will accept the calibration from the other.

Q When you have done aerial photography you have had to go through that process?

A Yes, sir, everybody does.

Q Your equipment.

A Yes.

Q Would you describe generally how aerial photography is actually taken?

A Well, to try to simplify it. Before we make a flight we would have an area that we are to photograph. We would mathematically on a map lay out the coverage of this area in a coordinate system similar to a checkerboard. We would lay out the squares on the map showing the area.

The squares on the checkerboard would indicate the photographs that we would fly. We would take the airplane with the special mapping camera in it and we would fly at a predetermined altitude and take the pictures over the flight path that would give us a photograph where we had plotted each square.

When it is processed we would then reassemble those photographs similar to the way you would lay tiles in your den floor, that type of thing, like a jigsaw puzzle, however, it is controlled and we would match the visual images that you can see.

Q When you do wkr for the Geological Survey, do you have to submit any information after you have finished your flight and your work?

A Yes. A series of information. The time of the day, the type of weather, the calibration, number of the camera, the camera used, the photographer's experience, any technical information pertaining to the processing of the film.

Q When you say special mapping cameras, what do you mean by that?

A We have cameras that are designed just for making maps. They are designed with a highly accurate lens and film holding system and it is an $80,000 type of camera and it is just highly accurate and it is used just for mapping.

Q You mentioned you take these checkerboard -- pictures which resemble a checkerboard, is that correct?

A Yes, sir.

Q Is there a recognized method by which those kinds of aerial photography pictures can be made into a composite picture?

A Yes, sir.

Q What are the recognized method or methods for doing that?

A Well, they would be assembled roughly the way I explained into the checkerboards and then by reference to an existing map we would make linear distance measurements and then knowing specific distances on the ground, we would then enlarge or reduce each photograph to meet that requirement thereby creating a scale on the overall photograph so that it would be meaningful. It would be like a map.

Q I take it when the plane takes these pictures there is an overlap from one picture to the next in terms of the area on the ground covered by the pictures?

A Correct.

Q How much overlap is there from picture to picture?

A It is a semi-automatic process on the camera. The camera is set to photograph where we overlap. Photograph by 60 percent.

Q So the Picture A would cover 60 percent of Picture B if Picture B is right next to it?

A Right.

Q When you lay those checkerboard photos down and make up the composite, do you use every picture or do you have to use every picture?

A No, sir. With 60 percent in addition to giving you 60 percent to the next succeeding picture, that is going ten percent into the following picture so we can eliminate every other picture and still have continuity in coverage and create a mosaic.

Q Two pictures are one apart in the scheme of things and they still overlap by ten percent?

A Yes, sir. If they are separated by one, yes.

Q Separated by one they still overlap?

A They still have ten percent forward and probably twenty-five percent side.

Q Under what circumstances would you have to use every picture as opposed to alternate pictures?

A The purpose of the 60 percent is in certain types of jobs we are also creating heights and contours for drainage studies and the extra picture gives you a third dimensional view from which we can determine heights, as I said, for drainage and things like that.

If we are just making a mosaic, that is not part of the job so we wouldn't need the intermediate photograph.

Q Did there come a time in 1976 when you were contacted by the United States Attorney's Office in this district to perform certain work?

A Yes, sir.

Q What was the nature of the initial work?

A To prepare three mosaics.

Q By mosaics you mean the kind of placing together of aerial photography you have described?

A Yes, I was told that the United States Attorney had photographs they wanted to assemble in a fashion that I just explained.

Q You had a series of discussions about doing that kind of work?

A Yes, sir.

Q Those discussions involved time and money in essence?

A Yes.

Q Eventually you reached an agreement?

A Yes, sir.

Q What was the agreement that you reached for doing that work?

A It was $2840, I believe.

Q That covered what work?

A That covered creating three mosaics from three different years.

Q Taking the pictures from those years and creating a mosaic for each year?

A Yes, sir.

Q The price was based upon the amount of time you spent on the job?

A Yes, sir, it was quite a number of photographs to be assembled.

Q Was the price charged your normal price for such work?

A Yes, sir.

Q Let me show you what has been marked as Government Exhibit 18 for identification, which consists of nine separate sets of photographs.

I show them to you and ask you if you can recognize them?

A Yes, sir. This is the duplicate set of the photographs that we were given to assemble in a mosaic.

Q Those photographs are for which year?

A I didn't go through all of them yet. I have to go through them to see.

Q Let me do that.

MR. DEVORKIN: I am going to offer Government's Exhibit 18.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Showing you part of what is Government's Exhibit 18, on the certificate that was taken October 26th.

A I don't understand your question.

Q According to the certificate attached to that exhibit, it was taken on October 26th of 1959.

A Yes.

Q And looking at the rest of Government's Exhibit 18, according to the certificates on these they were taken on November 6, 1959, were they not?

A Yes, they were.

MS. CROSS: I think,your Honor, at this point we should perhaps get into the representations that Mr. Devorkin is going to make about these pictures.

THE COURT: You said there were some there from October 26th. The index doesn't show any October 26, 1959 films.

MR. DEVORKIN: Your Honor, all but one of the sets --

THE COURT: There are nine sets here.

MR. DEVORKIN: That is right.

THE COURT: Nine sets all taken according to this index on November 6, 1959.

MR. DEVORKIN: That is an oversight. Eight of them were on November 6th and one is on October 26th.

THE COURT: Which is the one of October 26th?

MR. DEVORKIN: It is not marked separately. I am not sure what you mean.

THE COURT: The index says copies of negatives GS-VSR

MR. DEVORKIN: As your Honor knows, we didn't prepare the index.

THE COURT: This is the index I was told to work by. Don't tell me you didn't prepare it.

MR. DEVORKIN: I understand.

THE COURT: Which is the one that has to be changed on the index?

MR. DEVORKIN: It is labeled GS-VZR, Roll 2, frames 39, 41, and alternating through 55.

THE COURT: That should be 10/26/59?

MR. DEVORKIN: Yes, your Honor.

THE COURT: Now what is your problem?

MS. CROSS: I would like to have the representations made that Mr. Devorkin said he would make.

THE COURT: Go ahead.

MR. DEVORKIN: Records of the Geological Survey show that with respect to Government's Exhibit 18 for identification photographs were taken by Aerial Photo Services, No. 324 Main Mall, Tulsa, Oklahoma using a Wild RC8 camera, lens No. 129, calibrated focal length 152.03 millimeters from 9700 feet above mean ground during ideal weather conditions.

MS. CROSS: Am I correct that the film is probably Cronar, but you are not sure?

MR. DEVORKIN: That is correct.

THE COURT: Anything else you want?

MS. CROSS: And the time of day at which they were taken?

MR. DEVORKIN: I don't have the information.

THE COURT: What is your next point?

BY MS. CROSS:

Q The altimeter of the plane that you take pictures from has what kinds of markings on it?

A It is calibrated to ten feet in most cases.

Q In those cases it is calibrated to ten feet so within that ten feet you can be off, is that not correct?

A Yes.

Q Am I correct that normally there is someone taking the pictures and someone who is the pilot?

A Yes, ma'am.

Q So that someone is in the back in essence pushing the button and someone is in the front flying the plane?

A Right.

Q What job do you normally do, fly the plane or take the pictures?

A Recently fly the airplane, but I spent years taking the pictures.

Q Am I correct that in the case of these photographs a firm Aerial Photo Services, that an outside firm, not the government itself, takes these pictures, is that correct?

A Yes.

Q They get hired by the government to do it, is that correct?

A Similar to what I explained before with that bid system.

Q Am I correct this is done on a bid system, the lowest qualified bidder does it?

A Yes, ma'am.

Q Now, your firm did not take these individual pictures?

A No, ma'am.

Q That you have looked at. You weren't there when they were taken?

A No, ma'am.

Q You don't know, do you, what kind of filters may have been used on these pictures?

A You said may have been used?

Q Yes.

A I could assume it.

Q You don't know, do you?

A No.

Q You don't know if the information that the firm Aerial Photo Services from Tulsa, Oklahoma, whether or not they carefully recorded the information that they gave back to the government about height at which the photographs were taken or the camera focal length that was used, do you?

A I would say I probably do.

Q Probably but you don't know?

A I would say yes.

MR. DEVORKIN: He said he probably knows.

A Yes, I do.

Q You do know for sure that they did? But you weren't there when they were taken.

A No, ma'am.

Q You weren't there when the information was jotted down by the Aerial Services Company, were you?

A No, ma'am.

Q You don't know whether they read the altimater correctly or incorrectly, do you?

A No, ma'am.

Q You don't know whether they read the calibrated focal length of the lens correctly or incorrectly, do you?

A Yes, I do.

Q You know that they read it correctly?

A Yes.

Q The lens was focused correctly?

A May I explain why? It is recorded on the film.

Q I will ask you the questions. You don't know whether or not the lens that they used is as reported by the, do you?

A Yes, I do.

Q You don't know whether they changed the lens after they got the camera back, do you?

A That could be. No, I don't know that.

Q When they say ideal weather conditions, that means weather conditions where you can take pictures?

A No, there is a standard required by the U.S. geological survey.

Q It is just called ideal?

A No. There is a standard of sun angle and haze penetration.

Q They report sun angle and haze also?

A Yes, ma'am.

Q They do report that? Here so far as we know it is just ideal, is that correct?

MR. DEVORKIN: I object.

THE COURT: He said ideal standards for or represents sun angle and haze.

MS. CROSS: I am sorry.

Q Do they report separately the sun angle and the haze?

A Yes.

Q That's separately reported to the U.S. Geological Survey?

A Yes, ma'am.

Q Do they report other aspects of weather conditions to the Geological Survey?

A They report anything that would be pertinent to the photography and that would be haze, sun angle, cloud cover also.

Q Cloud cover, haze and sun angle. You also do not know what time of the day these photographs were taken, is that correct?

A I don't know how to answer these questions. What I am trying to say is I don't know personally, but it is recorded on the film.

THE COURT: Wait, that's all.

Q Do you know what time of the day?

A No.

THE COURT: That's all you are being asked.

Q There are a number of different kinds of film that are used in cameras, aren't there?

A Yes, ma'am.

Q Cronar, Pancro and so on, isn't that correct?

A Yes, but -- you are not naming different types.

Q In fact, there are many different kinds of cameras which will qualify to be calibrated and used on aerial flights, are there not.?

A If you would accept three or four as many, yes.

MS. CROSS: I have nothing further.

BY MR. FLEMING:

Q Is sun angle relevant to sho topography?

A No.

Q Shadows are not material to show the makeup of the land which you are photographing?

A It aids on a single photograph, but to show topography, no, sir.

Q Did you testify that in order to show topography it is necessary to use every picture?

A To calibrate the topography, yes, sir.

Q What do you mean by calibrate the topography?

A To record it as 5 feet, 10 feet, 20 feet, et cetera.

Q In order to tell the lay of the land, so to speak, hilly, gully, plateaus, arroyos, mountains, it is best to use every photograph, is that correct?

A No, sir.

Q That's not correct?

A No, sir. I said to calibrate it you need it, not to show it. I have to differentiate that.

Q Does the width of the lens have anything to do with showing topography?

A I don't understand that.

Q The different lens widths.

A You could exaggerate it, but that's not the lens we would use or accept it.

Q Does the width of the lens affect the way in which the picture shows topography?

A It would, yes.

Q Does the height from which the picture is taken affect the clarity or the manner in which the picture shows topography?

A No, sir.

Q Let me ask you: If you were to fly -- if you were to take pictures for the purpose of determining what portion of the land was suited or unsuited for the building of a home, would you fly at 10,000 feet or 1,000 feet?

A For a single home, neither, but low.

Q Low.

THE COURT: What's low?

THE WITNESS: For one home --

Q No, you want to fly over six miles of land and you want to make a determination as to whether the topography of the land lends itself or does not lend itself to the construction of homes?

THE COURT: On single-family homes on all of the land.

A It would be slightly a functionof other type of land, but I would say to pick a number, 10,000 feet.

Q You would fly 10,000 feet?

A Yes, sir.

Q That would give you such topographic definition to make a determination as to whether or not a particular spot on that particular photograph a house could be built?

A No, sir.

You went from one house to a development and we are bouncing back and forth.

THE COURT: We are not bouncing back and forth. If you listen to my explanation of his question.

You have 6,000 acres of land, say, and you want to build houses on each lot in that land, it could be a half acre or an acre.

The question being put to you is how high do you to fly or how low do you have to fly to make a mosaic or a film or whatever you call it so that you could look at it and determine whether it was good land for such a development.

MR. FLEMING: Or bad.

THE WITNESS: There is no way that I can answer that with one number because it just isn't done that way. I just can't answer it that simply. If you allow me to explain it, I would. 10,000 feet which I originally said would be the first flight we would make. From that we would be able to determine where the water area is, where the hills are, where it would be unsuitable to build homes.

The people on the ground, the survey crews who work in conjunction with us, would go down and get the details for the single frames. In other words, we wouldn't just keep going lower until we could pick it out for each house. We would study the entire area. The survey people would go in to these smaller acreages.

Q Is it fair to say that without the people on the ground conducting the survey you would not be in a position to say you can build a house here and you can build a house there?

A Yes, sir.

MR. FLEMING: Okay.

THE COURT: The government I assume now renews its offer.

MR. DEVORKIN: That's correct, your Honor.

MR. FLEMING: I object.

THE COURT: Overruled.

XXX (Government Exhibit 18 received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q The variation in the altimeter is the distance above the ground or the degree with which you can measure the figures shown in the altimeter would be the distance above the ground, correct, that the plane is above the ground? That is what the altimeter shows?

A No, it shows the height above sea level.

Q Then you have to know what height the ground is above sea level to calculate the height above the ground, correct?

A Yes, sir.

Q Mentioning time of day or you were asked about time of day, would you examine parts of Government's Exhibit 18 and do these photos have a clock on the side of them?

A Yes, sir.

Q Is that part of the camera equipment?

A Yes, sir.

Q That measures the time of the day the picture is taken?

A Yes, sir.

Q There is also an altimeter in the picture?

A Yes.

Q That is part of the camera equipment?

A Yes, sir.

Q The kind of film is also set forth on the photos themselves, if you look at the bottom edge?

A No, that just tells the company. There is only one type that is used.

Q What type is that?

A It is a milar film.

Q Let me show you what has been marked as Government Exhibit 19 for identification and ask if you have ever seen those before.

A Yes, sir.

Q What are they?

A These are the duplicate photographs from the 1967 flights.

Q By the way, Government Exhibit 18 is the alternate prints, correct?

A Yes, sir.

Q Is that also true of Government Exhibit 19?

A That is also true here, yes.

Q Those were the photographs you were given by the U.S. Attorney's office?

A These are the second set, yes sir.

MR. DEVORKIN: With respect to Government's Exhibit 19, Geological Survey files show that these photographs were taken in 1967 by Western Aerial Photos, Inc., 303 Conventional Way, Redwood City, California.

The camera is an Aviogon, 346. The lens is UAG346.

Q What does that stand for?

A The letters, Universal Aviogon.

MR. DEVORKIN: The calibrated focal length is 152.68 millimeters. 13,000 feet above mean ground. Ideal weather conditions.

I would offer Government's Exhibit 19.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Looking at different parts of Government's Exhibit 19, on these two packages of film the date that is recorded on the certificate is October 8th, is it not?

A Yes, it is.

Q Is it not also October 8th on this third packet?

A Yes, ma'am.

Q On these two packets of film the date recorded for taking it is September 20th of '67, isn't it?

A That's correct.

Q And on this package of film the date it was taken is represented to be September 21st, is it not?

A Correct.

Q On this one the date that it is represented to have been taken is September 22nd, is it not?

A Correct.

Q So that those different packages were taken on how many different days?

A Three, if I recall properly.

Q Four different days, September 26th --

A Do you want me to double-check it?

Q September 20th, 21st, 22nd and October 8th.

A Four days.

Q These, you said, were taken about 13,000 feet up?

MR. DEVORKIN: He didn't say that.

MS. CROSS: Excuse me.

Q 13,000 feet, is that 13,000 feet above sea level or 13,000 feet above the ground?

MR. DEVORKIN: I made the representation. I don't see how the question is proper. I said it was 13,000 feet above the ground.

THE COURT: She can ask the question.

Q In the normal U.S. Geological Survey for whom you have taken pictures before, when you record it as 13,000 feet, do you mean above the ground or above sea level?

A Above the ground.

Q It is above mean ground. The mean ground is what, the highest, low, middle, how do you figure mean ground?

A Approximately the middle.

Q Approximately the middle?

A Yes.

Q If you are in a place thathas some hills, some valleys, is mean ground -- how do you figure the mean ground in a place like that?

A If the difference between the low ground and the high ground is not great, let's say 100 feet, we will just average 50 feet in the middle and it makes little or no difference in the photograph, it is difficult to see.

If there were a large change, we would probably not fly mean ground in that case. We would fly 13,000 feet over the low area and as we got to the hills we would raise the airplane so that the total scale on the whole project were close to the same.

Q If you had mountains in the area, which was, say, 6,000 feet above the rest of the area that you were taking, then you would take the photographs over the mountain at a higher altitude?

A That is one method.

Q If you had an area that was, say, two or 300 feet -- rose two, three, 500 feet, would you take them at two different levels?

A Probably not.

Q At about how many feet high does the object have to be before you take it at another level?

A It would be a function of our altitude and what the photography were to be used for.

Q Now, am I correct that when you take photographs such as Exhibit 19 that you have in front of you, when you have an object that goes up in height, for example a road that goes up a hill at an angle, the photograph will foreshorten that road because it is taking it straight down, will it not?

A Yes, ma'am.

Q The road could be 1,000 feet long and it might be foreshortened to 900 or 800 feet or something like that?

A Probably not that much, but the theory is proper.

Q Am I correct that in one of these photographs the center of the photograph will be more accurate than the outer borders of the photograph will be in terms of distances and measurement?

A Very slightly.

Q But it will be more accurate?

A Yes, ma'am.

Q That is why you take it with an overlap because when you take one picture down the edges of the picture is angled out, is that not correct?

A That is partly correct.

Q Now, when you take a slight such as was presumbably taken for these, at times the plane or the camera will tilt slightly in the plane, will it not?

A Sometimes.

Q You have a tilt factor that you consider?

A Yes, ma'am.

Q After you have done them.

MS. CROSS: I have nothing further.

MR. FLEMING: I don't have anything.

MR. DEVORKIN: I offer them.

MS. CROSS: Object on the same basis, your Honor.

THE COURT: Objection overruled.

XXX (Government Exhibit 19 received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Woodward, showing you Government's Exhibit 21-A through 21-Y for identification, do you recognize them?

A Yes, sir.

Q What are they?

A The third set of photographs that I was asked is the mosaic.

Q Is that a duplicate set of these?

A Yes, sir, this is the duplicate set of what I have from 1975.

MR. DEVORKIN: With respect to Government's Exhibits 21-A through 21-Y, Geological Survey, the files show that the photos were taken by Mark Hurd, Aerial Surveys, Minneapolis, Minnesota. Camera number 21214. Lens number 98177. Lens type Pleogon-A. Calibrated focal length 152.36 millimeters. In ideal weather conditions.

Q Mr. Woodward --

MR. DEVORKIN: The height is 38,000 feet above the ground.

Q Mr. Woodward, are you familiar with a Pleogon-A lens?

A Yes, sir.

Q What kind of lens is it?

A It's a standard mapping lens.

Q How accurate is it?

A Each one is slightly different, but they all must meet the specifications that I explained before regarding the Bureau of Standards and the Geological Survey.

Q What are the limits on the accuracy of those kinds of lenses?

A It isn't something I could quote. It is as I said before millimicrons.

Q A micron is how large?

A Something you almost can't see like one 100th of a meter I believe it is or of a millimeter.

Q One 100th of a millimeter?

A I am not completely sure on that.

Q A millimeter is one 1,000th of a yard, approximately, is that right?

A If a meter.

Q Which is about a yard?

A Yes.

Q Are you familiar with an Aviogon 346 cemera and universal Aviogon lens?

A Yes, sir, it is the same thing with just a different trade name.

Q Also a specialized mapping camera?

A Yes, sir.

Q Have you ever used such cameras?

A Yes, sir, we have a series of them.

Q Are you familiar with a Wild RC8 camera?

A Yes, sir.

Q Is there a standard lens that goes with it?

A Usually the Universal Aviogon that you just explained.

Q Is that also a mapping camera, specialized mapping camera?

A Yes, sir.

Q By the way, you mentioned there were standards for weather conditions when you take pictures for the Geological Survey, is that correct?

A Yes, sir.

Q Are you familiar with those standards?

A Roughly.

Q What are the limitations in temrs of weather when you take aerial pictures for a geological survey?

A I would say that it is less than 10 per cent cloud cover you must have. Not less than 30 degrees of sun angle and the haze condition is represented in a way that you can measure it on the film.

Q You mentioned that there is a slight variation in the accuracy from the center of one of these photographs to the outer edge, correct?

A Yes, sir.

Q How slight is slight?

A That is a tough question. Very slight to the point where we can mosaic photographs together without taking that into consideration.

Q You were asked about a tilt factor of the camera. What effect, if any, does that have on the accuracy of a large mosaic that is made from these kinds of photographs?

A I would say basically none based on the fact that the requirements of the U.S. Geological Survey, which these were flown for, require that you cannot have more than one degree tip or tilt over the course of a project and one degree certainly doesn't affect it much.

Q The tip or tilt is the tip or tilt of the aircraft?

A Of the camera. In some cases the cameras are gyro-stabilized and you don't have that problem. Regardless of what the airplane does, the camera stays vertical.

Q Have you seen photographs like those in Government's Exhibits 18, 19 and 21 in your own work, comparable photographs, aerial photographs?

A Yes, sir.

Q You have used comparable aerial photographs?

A Yes, sir.

Q How would you assess the quality of these photographs?

A As good.

MR. ARKIN: I move to strike the answer as meaningless.

THE COURT: Overruled.

MR. DEVORKIN: I offer Government's Exhibits 21-A through 21-Y.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Am I correct, Mr. Woodward, that eight of the photographs carry a date of June 20, 1975?

A That's correct.

Q And four of the photographs carry a date of June 21, 1975?

A Correct.

Q And eight more of the photographs carry a date of June 26, 1975?

A Yes, ma'am.

Q Now, you were talking about in photographs of the type that you have in your hand that the lens is accurate to 100th of a millimeter or a millimicron?

A That is part of the calibration.

Q That is the calibration of the camera, is it not?

A No, it is the calibration of the total system.

Q That takes the pictures?

A Yes, ma'am.

Q That is not -- does not mean that you pick up on the ground or more accurate on the ground to the degree of one millimicron or one 100th of a millimeter?

A That's correct.

Q Up there you are that accurate, down there you are not necessarily that accurate?

A That's correct.

BY MR. FLEMING:

Q Why do you require a sun angle of not less than 30 degrees? Why does the Geological Survey require that?

A Certain types of jobs, if you have got a very hilly terrain, if it's going to be used for picturesque purposes, they are concerned with the long shadow possibly obscuring some detail.

Q Did you testify that it was required to have a sun angle of not less than 30 degrees?

A Yes.

Q Do you know where the other photographs taken on the other days are? You have photographs there taken on three days in June, is that correct, of 1973, I believe?

A Yes, sir.

Q '74, '75. Do you know where the other photographs taken on those three days are?

A I don't understand the question.

Q Those are all photographs of the Albuquerque area, are they not?

A Yes, sir.

Q I assume that some of those are dated June 21, 1975?

A Correct.

Q I assume that when those photographs were taken the pilot making the flight or the photographer in the airplane taking the photographs took a strip of film all the way across the Albuquerque area, isn't that the ordinary practice?

A That's possible, I wouldn't know that.

Q All the photographs taken on June 21, 1975 are not in that pile, are they?

A I don't know that.

Q Didn't you compile a mosaic based upon those photographs?

A Yes, sir.

Q Didn't you have to use photographs taken on differing days to build the entire mosaic?

A Yes, sir, that's a standard practice.

Q I didn't ask you that. That's what you did?

A Yes.

Q Did you inquire where all the photographs taken on June 21st were?

A No, sir.

Q You have no idea where they are?

A No, sir.

Q You agree they must have been taken?

A No, sir.

Q You mean they want dot dash, dot dash?

MR. DEVORKIN: Mr. Fleming is assuming there were other photographs.

He is assuming facts that aren't in evidence. He is assuming photographs were taken except for the alternate photographs.

THE COURT: I don't know what Exhibit A consists of.

THE WITNESS: It is a series of pictures, your Honor.

THE COURT: 21-A. Can you take that out from the group?

THE WITNESS: Yes, sir.

THE COURT: How many photographs?

THE WITNESS: One.

THE COURT: He must have taken more than one photograph and then went down and went to bed and three days later he went back and took another one.

MR. DEVORKIN: I don't think that's accurate, your Honor. The point is inaccurate. We can clear it up very easily.

THE COURT: Go ahead.

MR. FLEMING: All right, I will let him go ahead.

MR. DEVORKIN: Are you done?

MR. FLEMING: Yes.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q The pictures are taken in sequence, right?

A Yes, sir.

Q These are alternate pictures on the same reels, correct?

A Yes, sir.

THE COURT: That is the point. There is only one picture, 21-A. What is that alternate to?

MR. DEVORKIN: I am going to explain that right now, your Honor.

Q 21-A is reel 2 exposure 6 dated June 20, 1975, correct?

A Yes, sir.

Q That indicates the reel of film and the exposure number on that reel, correct?

A Yes, sir.

Q 21-B is reel 2 exposure 8 dated June 20, 1975?

A Yes, sir.

Q The same reel, the alternate exposure, correct?

A Yes, sir.

Q C is the same reel, the next alternate exposure?

A Correct.

Q D is the same reel, the next alternate?

THE COURT: What date?

Q The same date.

A Yes, sir.

Q E is the same reel, the same date, exposure 37, correct?

A Yes, sir.

Q F is exposure 39, correct?

A Yes, sir.

THE COURT: Same date?

MR. DWORKIN: Same date.

Q G is exposure 41?

A Correct.

Q H is exposure 43, same date, correct?

A Yes, sir.

THE COURT: Wait a second. That's J, right? You have gone all the way through from A to J.

MR. DEVORKIN: A to H.

THE COURT: What about I and J?

Q Take I, I is reel 3 dated June 26, 1975, correct?

A Correct.

Q And it is the alternate exposure starting 97, ending with 111, correct?

A Yes.

Q J is reel 2, dated June 21, 1975, alternate exposure starting with 127 through 133?

A Correct.

THE COURT: How many pictures are there in J?

MR. DEVORKIN: There are four and the certificate reads four.

THE COURT: All right.

Q Geological Survey keeps all of the pictures, correct?

A Yes, sir.

Q In fact, Geological Survey's photographs are available for purchase by the public, aren't they?

A Yes, sir.

MR. FLEMING: I object.

MR. ARKIN: Object to the question.

THE COURT: Sustained.

Q Anybody can go to the Geological Survey and get any of these pictures, correct?

MR. FLEMING: Object.

THE COURT: Sustained.

What has that to do with offering these? That has nothing to do with Mr. Fleming's question. He says they were taken on three different days. He wants to know how you can take them on three different days and be alternate pictures. Nothing to do with whether I can buy them or not

MR. DEVORKIN: I renew my offer.

MR. FLEMING: May I see these photographs, please.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q 21-A through 21-H are photographs all of which were taken, I assume, on the same flight on June 20, 1975, is that correct?

A I would assume that also.

Q 21-I consists of a series of photographs which were taken apparently on the same flight on June 26, 1975?

A Yes, sir.

THE COURT: I am sorry, I have to adjourn now. I am late.

We will continue this tomorrow morning at 10:00.

(Adjourned until Tuesday, December 7, 1976, at 10:00 a.m.)

***

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Morris Gusowsky (resumed)		3842	3868	
Kenneth C. Neiswander	3880	3898	3932	3935
Charles Woodward	3935			

EXHIBIT INDEX

Defendants	Identification	In Evidence
ED	3855	3856
EE	3908	3909

Government	Identification	In Evidence
110-L		3868
663		3890
18		3959
19		3965

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 7, 1976
10:00 A.M.

Trial Resumed

(In open court - jury present)

CHARLES WOODWARD, resumed.

THE COURT: Good morning.

You may proceed.

I gather when we left yesterday we were trying to find out how these pictures could be used since they did not appear to be alternate pictures.

MR. DEVORKIN: Your Honor, I believe I did clarify with Mr. Woodward that they are alternate pictures.

THE COURT: I don't think so.

MR. DEVORKIN: I believe we did clarify that.

THE COURT: I don't think so. They were taken on separate days and on separate rolls was the last I heard when we adjourned.

Do you want to try it again.

MR. DEVORKIN: Sure, I will clarify that, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. DEVORKIN:

THE COURT: You conveniently stopped at H. I had to tell you you had not asked about I and J.

Q You have noticed in Government Exhibits 18, 19 --

THE COURT: We are talking about 21-I and J.

Q You have noticed with respect to each of those exhibits that some of the photos are taken on different dates, is that correct?

A That is correct.

Q In the field of aerial photography in your experience are photographs of a given area taken on different days?

A Usually if it is a good sized area.

Q Will you explain why that is the case?

A As I explained before, because we are restricted to work within certain sun angles and certain weather conditions. It s rare that you can go out and spend a complete day just flying back and forth securing the photography.

This way you have got low sun angles, poor haze and things like that so we work in the better part of the day and we will usually do it in two, three, four days. Quite often there is a longer interim photography based on getting a clear day, we get a third of the job finished and then we may have to wait four more days to get the proper type of day we will need and we will fly three more so we do it in sections based on weather.

Q You are working within the parameters that have been set for you by the agency you are working for?

A Right. If we tried to work all in one day, being that the sun angle and the haze changes, the quality wouldn't be as good as it is picking your days and times.

Q Any given strip of flight of the aircraft will be on the same date, is that correct?

A We strive to do that, but we have broken that. On long strips if there are hills and there is clouds over the hills, we will do it in two sections.

MR. DEVORKIN: I think that clarifies it, your Honor.

THE COURT: Of course it doesn't.

MR. DEVORKIN: I don't understand your Honor.

THE COURT: You had better understand

Mr. Fleming's point.

When Mr. Fleming made the objection, you say Mr. Fleming didn't understand it and you were going to clarify it for him.

You have now gone through this and I am sure it has not clarified Mr. Fleming's point.

That is the basis upon which you put the witness back. Are you satisfied, Mr. Fleming?

MR. FLEMING: No, I am not, your Honor.

THE COURT: Do you want to ask him questions now? Maybe your question will bring to Mr. Devorkin's attention what you are looking for.

MR. FLEMING: I would rather stay on the sidelines, Judge.

THE COURT: If you do that I will let it in.

MR. FLEMING: So I will ask some more questions.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mr. Woodward, this series of pictures here which are marked as 21-A through 21-H and according to the certification that appears on each they were all taken on June 20, 1975 and am I correct they are pictures of a portion of the City of Albuquerque on that date, June 20, 1975?

A Yes, I have seen these before.

Q Now, here is a picture or a series of pictures which were taken according to the certification on June 26, 1975, and I presume they purport to be pictures of other sections of the Albuquerque area; is that correct?

A That is correct.

Q Now the question, if I can frame it correctly, the question I am asking is:

Do you know whether pictures of the areas identified here as taken on June 26, 1975 were the pictures of those areas were also taken on June 20, 1975?

A I don't understand the question either? Just the last part.

Q Here is a picture and it shows terrain, is that right?

A Yes, sir.

Q According to the certification it was taken on June 26th?

A Right.

Q My question is do you know whether the same terrain was photographed on June 20th?

A I don't know that, but I would assume it wasn't. The same terrain?

Q Yes There was a plane out flying around on June 20th taking pictues, correct?

A And also on the 26th.

Q I understand that.

Do you have any reason to say that the terrain which is pictured as photographed on June 26th was not also photographed on June 20th?

A I don't know that as a fact, but in the normal procedure you wouldn't do that. Reverting to that checkerboard, if they flew this checkerboard section on this date, they would fly the next one on the following date.

Q Wouldn't you fly as much of the project as you could on a particular day so long as the weather conditions held and the light held?

A Right, but we don't know that.

Q You don't know how much they photographed on June 20th?

A No, I don't know how much they flew.

Q You don't know whether the section which is photographed here under date of June 26th was also photographed on June 20th, you don't know, do you?

A Not for sure, no.

Q You don't know at all, do you?

A No. When I say for sure, it is just the technique that we used. It wouldn't make any sense to do it. If they flew it on the 20th, there would be no reason to fly the same area again on the 26th.

Q I see.

A That is all.

MR. FLEMING: That is as clear as I can make it, Judge.

THE COURT: Objection overruled.

(Government Exhibits 21-A through 21-J, inclusive, received in evidence)

XX

BY MR. DEVORKIN:

Q Mr. Woodward, you recall yesterday I believe Ms. Cross asking you whether it was possible that the camera used by the company making these pictures could have been changed from the representation they gave to the Geological Survey?

A Yes.

Q And do you recall her asking you whether the data that they recorded in the plane that day could have been changed or altered from -- whether it was submitted to Geological Survey from what it actually was?

A Yes, I do.

Q When you work under contract for the Geological Survey or any other agency of the government, does that agency make any check of your data or figures before they accept the photographs to satisfy the contract?

A Definitely. They send a representative to the company to check it before they accept it.

Q How is that check actually made?

A After we complete the photography we notify them and they will send their technical representative who will scrutinize the film, the prints, match -- the information is all recorded on the film.

Each camera has a whole recording system inside. It has an altimeter, it shows the number of exposure, the altitude, the time, the focal length of the lens, all these things that you are referring to are photographed onto the film and they can, of course, determine that it is the proper camera that they certified for the job.

Q Taking Government's Exhibit 18 --

MR. DEVORKIN: Your Honor, may I read one of the certificates to the jury to indicate to them what it is?

THE COURT: Yes.

(Mr. Devorkin read from Government

Exhibit 18 in evidence to the jury)

Q Mr. Woodward, what, if anything, did you do with Government's Exhibit 18, which are the photographs from 1959?

A We assembled them together in a mosaic form similarly to the way I explained yesterday in that checkerboard fashion and created an overall mosaic of the '59 photography.

Q How did you actually assemble those photographs? Would you explain the process of what you do?

A Kind of the way I explained yesterday. They are assembled visually matching up the photographic points that we can see similar to the way you would lay a tile floor that has a pattern to it. It will only fit in one way.

When the whole thing is completed, we assemble them, seal them together and you have an overall mosaic of the area.

Q You are matching physical features on the ground that you see?

A Yes, sir.

Q What do you do with the overlap from one picture to the next?

A Well, the overlap enables us to pick the best matching spot. We try to use the center portion of the photograph so everything is looking straight down. That just gives us the leeway to do it a little better.

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Q You cut off the overlap along the fitting portions of the picture?

A Yes, sir.

Q In this case, after you had the duplicate set of photographs mounted in place and fitted in place, what did you do next?

A You had asked us to prepare an overhead projector slide so we rephotographed that again and produced a transparency that could be utilized with an overhead projector.

Q What did you do with that after that?

A We then enlarged that up to an exacting scale of one inch equals a half a mile.

MR. DEVORKIN: Mr. Clerk, will you mark this Government Exhibit 1073-A.

XXX

(Government Exhibit 1073-A marked for identification.)

Q Showing you Government Exhibit 1073-A, Mr. Woodward, can you identify it?

A Yes, sir, that's the enlargement from the 1959 photography.

Q That was made from the duplicate set of Government Exhibit 18?

A Correct.

Q The scale on this mosaic is what?

A One inch equals a half a mile.

Q When you enlarged the negative, did you do anything to make sure the scale was one inch equals half a mile?

A Yes, sir. We reference it to a map that has a known accuracy to it. In this case I believe we used -- I know we used a Hagstrom map of the area. The way we do it we will locate two points on the map that we can physically find on that mosaic. If we know the scale of the map, we know what the distance is between those two points. Knowing the scale of this map, we then have a very accurate enlarger that can enlarge negatives up to two decimal places very accurately.

We now enlarge that negative so that those two points on that photograph measure the distance that they should based on the distance that we know and we will do that in two or three areas to make sure that there is no error.

Q That was done with Government Exhibits 1073-A?

A Yes, sir.

MR. DEVORKIN: I offer 1073-A.

MS. CROSS: May I ask a few questions, your Honor?

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Yesterday, Mr. Woodward, I believe you described a method of mosaicing pictures together somewhat the way you described it today. The first step as I understand it, am I correct, is to lay the pictures down and see how they sort of fit together?

A Correct.

Q And then the next step is to measure the linear distances on the photographs that you have got and measure linear distances that you know on the ground to make sure that they are correct in scale, is that correct?

A That wouldn't necessarily be the next step, but, yes, that's correct, more or less.

Q When you do photogrammetry, making maps from photographs, is that what it is, photogrammetry?

A Photogrammetry, yes.

Q You then measure a known distance on the ground between two objects and then measure on the map to make sure that it is the same distance apart, don't you?

A If you are referring to the photograph as a map, yes.

Q For example, as I asked you yesterday, there is a road that goes up a hill and you take an aerial straight down, the road will be foreshortened, isn't that correct?

A Yes.

Q When you are making a map out of a photograph, when you are doing photogrammetry, you then measure the distance on the road and if you will flatten it out sort of, isn't that correct?

A No, not completely. There are certain foreshortening that just stays there. You have that same foreshortening on the map because the way that a map measures, if a road is tipped like this, the map is looking straight down on both points so even a highly accurate map with slightly, I mean very slightly, inaccurate on a road such as you describe.

Q But one of the purposes of photogrammetry is to in essence take these photographs and readjust them to make the scale absolutely accurate to what is on the ground, isn't it?

A That's correct, looking straight down though.

Q Yes, looking straight down, but after you have taken these pictures, some of them are not quite to scale because of the topography of the area, isn't that true?

A That's true, correct.

Q And in photogrammetry you readjust the picture to make it accurate to what is on the ground?

A Correct.

Q Now, also if the airplane you said could have up to a one degree tilt, isn't that correct?

A Right.

Q And perhaps if the cameras and gyroscope can tilt a little, isn't that correct?

A Correct.

Q One purpose of photogrammetry is to readjust for the tilt and the tip, isn't that correct?

A Correct.

Q What you do is you get a rectifying enlarger and you put the picture on the rectifying enlarger and you enlarge it correcting the distances to be accurate, isn't that true?

A On certain types of jobs, yes.

Q When this is not done it is called uncontrolled, isn't it?

A That's correct.

Q The mosaic that you made here, you did not do scale ratio and the rectification on it, did you?

A We did part of that so it is semi-controlled.

Q Semi-controlled but not completely controlled for that?

A We ratioed, but did not rectify, if that's what you want to know.

Q You scale ratioed?

A Yes.

Q Did you write to the government and tell the government that you would not scale ratio in this instance, do you recall sending a letter to the government telling them that your fee would not include scale ratio?

A No. Maybe I am misleading you. I didn't scale ratio each photograph. We scale ratioed these mosaics which at that time I didn't even know I was going to have to do. This was a 1st minute request so it is academic.

Q You mean the mosaic as a whole, but the individual photographs you didn't scale ratio?

A Correct.

Q Did you paste these pictures together?

A No.

Q You did not?

A Physically myself, no.

Q Did you lay them out and cut them?

A No, I worked with the technicians.

Q But you did not lay them out and cut them and put them on that board?

A No, ma'am.

MS. CROSS: I have no further questions.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Were you in effect attempting to make a map?

A No, we were making an aerial mosaic. I am picking on the terminology because I am not sure what you mean. A map to me would be a line final drawing. This is a photograph so we were making a mosaic.

Q Can I use the phrase aerial map?

A Yes, certainly.

Q That's what it was meant to constitute?

A Yes.

Q Do you have the Hagstrom map you used to make scale?

A Not with me.

Q Can you tell looking at that photograph what part of the land is appropriated for building one unit homes?

A I couldn't because that isn't my area of expertise, no, sir.

MR. FLEMING: I object.

THE COURT: Overruled.

XXX (Government Exhibit 1073-A received in evidence.)

MR. DEVORKIN: May I just show it briefly to the jury, your Honor?

THE COURT: Yes.

Okay, next question.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Woodward, what did you do with Government Exhibit 19, if anything, which are the photographs for 1967?

A We prepared a similar type of mosaic as we did for 1959. We used the same procedure and prepared a mosaic from the 1967 prints that you gave us.

Q That mounting and cutting and placement work was all done under your supervision?

A Yes, sir.

Q After it was all mounted, what did you do next?

A We rephotographed that mosaic similarly to have a comparable scale of one inch equals a half a mile.

MR. DEVORKIN: Will you mark this, Mr. Clerk, as Government's Exhibit 1074-A.

XXX (Government Exhibit 1074-A marked for identification.)

Q Mr. Woodward, showing you Government Exhibit 1074-A, can you identify it?

A Yes, sir, one inch equals one half mile 1967 aerial mosaic that we prepared.

Q That was done with a duplicate set of Government Exhibit 19?

A Yes, sir.

Q In the same manner that Government Exhibit 1073-A was prepared?

A Yes, sir.

MR. DEVORKIN: I offer 1074-A.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q This one is also, as you call it, semi-controlled?

A Yes, ma'am.

Q Not scale ratioed and rectified if you wanted to make a map from it, is that correct?

A As I said before, it was ratioed, but not rectified.

Q Ratioed though only as a whole but not within the pictures, isn't that right?

A That's the technique we would use.

MS. CROSS: If you would give me a moment, your Honor, I have to find one picture.

(Pause.)

(Continued on next page.)

BY MS. CROSS:

Q I show you, Mr. Woodward, part of what has been marked as Government Exhibit 18.

It is five photographs back in this group and ask you you if you see that building there (indicating).

A Which are you pointing at?

Q The building that is there along that main road.

A Yes, I do.

Q Showing you Government's Exhibit 1074-A, do you see that building on this map?

A Yes, I do.

Q It is sort of cut in half, isn't it?

A It is a slightly different shape, yes.

Q That would be where you put one of the mosaics over -- covering up part of that building?

A No, not necessarily. I cannot tell you right now.

MR. DEVORKIN: Can the exhibit be moved so the jury can see Mr. Woodward when he testifies?

MS. CROSS: I am sorry.

A When we do the photography in the checkerboard fashion, there is an overlap.

Q Yes.

A And as you view a certain item from one angle or from another angle, it looks slightly different.

Now, we don't cut anything off so I would assume that you just picked out the wrong photograph and a different photograph was used to show that building.

Perhaps if you found the next strip on the side you would see it.

Q Can you find in here the picture that you would have used, showing you Government's Exhibit 19?

A Probably No. 3.

Q Could you find it among them?

A Can you show me this again so I can relate it to something?

Q Can I hold it here?

(Pause)

A We would have to go through them.

Q But on the picture that I just showed you it is not what is on the mosaic that you have got?

A No, that is probably the view to the left or the right of the one we used.

Q It does not accurately then show from the small picture to the mosaic, is that correct?

MR. DEVORKIN: I object to that, your Honor. It is a total mischaracterization. He just said he used a different picture that had what is on the mosaic.

THE COURT: I understand you offered the small pictures as being the ones from which this mosaic was made.

MR. DEVORKIN: Right.

THE COURT: Therefore, whatever appears on the mosaci should appear in the small pictures?

MR. DEVORKIN: Exactly.

THE COURT: That is what Ms. Cross is looking for.

MS. CROSS: That is correct, your Honor.

MR. DEVORKIN: Okay.

MS. CROSS: To see if there is another copy.

A Do you recall the number that you showed me?

Q I show you this one also and ask you what that building looks like on that photograph.

A This is the same building on an overlapping photograph.

Q In fact, that building looks basically the same as it looks in the photograph, doesn't it?

A Basically.

Q Neither of them look like the building looks in the mosaic that you made, does it?

A No, it is slightly different so we still must not have the proper photograph.

Q You think there is another photograph among these?

A There are no cut lines in there so I know the photograph hasn't been cut.

THE COURT: The only question is whether -- you have before you 1074-A, right?

MS. CROSS: Yes.

THE COURT: Whether in Exhibits 21-A through 21-J there is a photograph that looks like that.

THE WITNESS: There has to be. Apparently what it is --

Q Would you please find --

THE COURT: Ms. Cross says she cannot find it and she is asking you to find it.

MR. DEVORKIN: For the record, your Honor, it is Government's Exhibit 19 and not 21.

MS. CROSS: Government's Exhibit 19 are the small ones.

THE COURT: I thought we were talking about 1074-A.

MS. CROSS: That is the mosaic and the small individuals are 19.

THE COURT: Right, sorry.

(Pause)

THE WITNESS: I haven't found it yet, but it is kind of like looking for a needle in a haystack.

Q You made Government Exhibit 1074-A out of what is Government Exhibit 19, is that correct?

A If this is Government 19, yes.

Q You didn't use any other photographs to make this mosaic, did you?

A No, ma'am.

Q In fact, isn't what happened that when you cut along that line you covered up about half that building?

A It's possible. The only thing I am assuming is in the checkerboard fashion, if this building happened to appear at the intersection of four prints, it could be on any one of the four which is what I am looking for.

Q You found it on two prints, haven't you?

A So far, yes.

Q You have looked through all those prints, haven't you, Mr. Woodward?

A Yes, ma'am.

Q In fact, the building is not accurately represented from those prints to this mosaic, is that not true?

A It does look to me like part of that building was eliminated in the mosaic which I could not see from a distance.

Q That building is in Rio Rancho, isn't it?

A I don't know that property. I assume it is.

Q You have been out there, haven't you?

A Yes, but I don't know where their boundaries end. I would assume it is.

Q The road that goes next to the building, that doesn't exactly match up between the two prints, does it? The road here.

A I don't know that that is a straight road.

Q It isn't at least in this print.

A Correct.

Q And in Exhibit 19 and part of Government's Exhibit 19 that I show you, is it a straight road there?

A Yes, just about, almost, right.

Q But it is not in this?

A No, it is slightly mismatched.

Q Slightly mismatched?

A Yes.

Q This is a ratio of one inch to a mile?

A Half a mile.

Q To half a mile.

MS. CROSS: I have nothing further.

MR. FLEMING: I have no further questions.

THE COURT: You have no voir dire questions, Mr. Fleming?

MR. FLEMING: No, I don't.

MS. CROSS: I would object to the exhibit.

THE COURT: Overruled. It has been pointed out by Ms. Cross will go to the weight that the jury will give to this photograph and not its admissibility.

(Government Exhibit 1074-A received in evidence)

MR. DEVORKIN: May I show it briefly to the jury, your Honor?

THE COURT: Yes.

All right.

BY MR. DEVORKIN:

Q Mr. Woodward, running across the top of Government's Exhibit 1074 there are various markings. For example, it says 9/22/67.

Do you know what that marking indicates and how it got there?

A Yes, sir, that is the date and there is other information on there and that is put on there as part of the presentation --

THE COURT: The document is now in. You

don't have to go through that. That was only for the purpose of getting it in.

MR. DEVORKIN: I just want to explain what these markings are.

THE COURT: It is not a part of your proof, is it? Let's go on to the next question.

Q Mr. Woodward, what, if anything, did you do with the duplicate set of Government's Exhibits 21-A through 21-J?

A Is that the 1975?

Q The 1975 photos.

A Yes, we prepared a mosaic similar to the '59 and the '67 using the same techniques.

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Q And after you prepared that mosaic what did you do? After you mounted all the pictures and so forth what did you do?

A We rephotographed that also to one inch equals a half mile.

Q Did you also check the scale versus the map and enlarge it so that the scale corresponded to that map?

A Yes, sir.

MR. DEVORKIN: Mr. Clerk, can we mark this 1075-A.

XXX (Government Exhibit 1075-A marked for identification.)

Q Mr. Woodward, showing you Government Exhibit 1075-A for identification, can you recognize it?

A Yes, sir. The final one inch equals a half mile mosaic from the 1975 duplicate prints.

MR. DEVORKIN: I offer 1075-A.

MS. CROSS: May I ask just a couple of questions?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q This one is also semi-controlled as you said?

A Correct.

Q Directing your attention to this part of the map, do you know what that part is, geographically in

Albuquerque?

A It's a series of roads, is that what you mean?

Q Do you know what that area is called?

A No, I don't.

Q Taking, for example, this road here, again, the two parts of that don't match up, isn't that correct?

A Correct.

Q And that's where two pictures are pasted together?

A Correct.

Q Here two roads don't match up, isn't that correct?

A Correct.

Q And that's again where two pictures are pasted together?

A Yes.

Q As a matter of fact, in a number of places throughout this area the road system doesn't match up, isn't that correct?

A Correct.

MS. CROSS: May I have a minute, your Honor?

Q This map shows a much larger area than the earlier two maps, does it not?

A Yes, it does.

Q It includes a great deal of terrain that's not included in the first two?

A That's correct.

MS. CROSS: I have nothing at this moment.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Mr. Woodward, if we took the first mosaic, which was the 1959 mosaic and laid it over that photograph, would it match?

A Reasonably, yes.

Q What does that mean? You said it was the same scale. What do you mean by reasonably?

A As we said, it's a semi-controlled mosaic. If you are going to pick out a tenth of an inch and then say it doesn't match, then it doesn't. If you consider that matching then it does. I don't know how accurate you want to get.

THE COURT: He is trying to find out from you what you mean by reasonably.

THEWITNESS: That's what I mean by reasonably, something like that.

THE COURT: Fractions of an inch?

THE WITNESS: Yes, sir.

A In the process of making a semi-controlled mosaic, we will let a small isolated area kind of sway around in an effort to get the overall mosaic in the proper scale.

Q Did you say is the scale one half inch to a mile?

A Yes, sir.

Q Did you say it could be off as much as a half inch, is that what you said?

A No, I said a tenth of an inch.

THE COURT: Wait a minute. I thought it was one inch to a half mile.

THE WITNESS: I'm sorry, that's what I thought he said.

THE COURT: What is the scale? You put it together.

THE WITNESS: One inch equals a half mile.

Q What sort of distortion would you consider to be reasonable?

A It would depend on where you looked. In the flat areas it would be very close. In some of the hilly areas outside of our area of interest they would probably not be so careful there.

Q My question was what distortion would you consider to be reasonable?

A In tenths of an inch. That type of a distortion.

Q So instead of having one inch equalling a half mile, you would have one and one-tenth inch being a half mile?

A No, sir. In one spot it could be mislocated by a tenth of an inch. That would not in any way affect the overall scale of the mosaic.

Q So then if we took the first exhibit, 1959, and matched up with this one, you could cut a lot of that off and you would have the same area on this chart, on this exhibit, is that right?

A Yes.

MS. CROSS: We would object to this one, your Honor, for two reasons. Both the inaccuracy of it and second that it covers a much larger area than the other ones.

THE COURT: I would be in favor to cutting it down to the size of the other two.

MR. FLEMING: I would request that, your Honor.

THE COURT: This one is nearly twice as big to my eye as the other to me.

MR. DEVORKIN: Can we approach the side bar, your Honor?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes.

MR. DEVORKIN: Your Honor, first of all, there is nothing in 1075-A which is irrelevant to the case. There are many things in there because photography was available for a larger area in that year that are very pertinent to the case.

THE COURT: Then you ought to have it on the other ones, too.

MR. DEVORKIN: Your Honor, we took as much photography as we could. Those pictures are accurate to represent what they do.

THE COURT: You missed the point. The point isn't accuracy, the question is comparability. When you look at this one, I get an entirely different impression than looking at the two small ones.

MS. HYNES: I just want to ask him something.

THE COURT: This is his point. You handle your witness and this is his witness.

MR. DEVORKIN: Can Ms. Hynes and I confer for a second, your Honor?

THE COURT: Go ahead. Over in the corner.

(Pause.)

MR. DEVORKIN: One of the major points before the last mosaic is between the 1967 time and this mosaic was when Rio Rancho added the 37,000 acres which are the northern sections of the property. I believe this mosaic, 1075-A, is the only one that includes that larger northern section of Rio Rancho.

THE COURT: Is that true?

MS. CROSS: I have not spoken to the U.S. Geological Service, but I would point out to your Honor that the small pictures jump in number from 12 to number 37. They were obviously taking pictures then beyond what has been put into the mosaic with the rest of those numbers.

THE COURT: He says he wants to put them in because the larger picture shows your acquisition which doesn't appear on the smaller pictures.

MS. CROSS: But it shows an awful lot more than the acquisition for one and, two, you can put the area in the smaller ones that became the acquisition to make it comparable.

THE COURT: If they have it.

MS. CROSS: What I am suggesting is --

THE COURT: Do they have it?

MR. DEVORKIN: I don't know, your Honor. Originally three or four months ago when the request was made, we asked to cover the area that would include up to Ric

Rancho and include as much as Albuquerque as was available and that's what we got back.

I think that the mountains on the right-hand side of 1075-A are shown the clearest in 1075-A and it's a point that doesn't cut for or against the government, but it seems to me the jury should be aware of the mountains and the jury should have a good idea as to where they are.

If Ms. Cross wants us to take the top off the mosaic and cut off the top boundary up into the hills of where Rio Rancho is, we can try to do that, but it seems to me otherwise the mosaic is a fair and accurate representation of the area.

THE COURT: But this is being offered, and I am taking it on comparability. I am saying when you give me a picture that's twice as big as the smaller one, I have a completely different reaction to it and I am sure everybody does with their eye.

MR. DEVORKIN: One of the reasons it's larger is because of the area and also the questionof the scale.

THE COURT: Why can't you get pictures to make the smaller ones larger?

MR. DEVORKIN: I don't know whether we can or we can't, your Honor. At this stage we are talking about pictures which are all to the same scale. The reason that physically it's a larger exhibit is because, as you remember, the mountain mosaic of 1075 started at a much smaller scale and it was taken at a higher altitude so when it was blown up, naturally it became much larger than the others and consequently the others were also reduced somewhat so we could get the best scale that would fit all of them. That's what we tried to do.

THE COURT: I have no objection to this coming in to the extent that it shows the increase of the Rio Rancho, but I think it should be cut off on top of that.

MS. CROSS: And I would suggest on the eastern border to be comparable to the other photographs. It's larger all the way around.

THE COURT: Why don't you, during the recess, have this gentleman mark out with a pencil or pen or something so I can look at it and determine what should be done.

MS. CROSS: Fine.

(In open court.)

MR. DEVORKIN: I would renew my offer, your Honor.

THE COURT: No, I will hold it until after the recess.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Woodward, after the original mosaics for these three years were completed, did you have any other discussions with the U.S. Attorney's office about additional mosaics?

A Yes, we did.

Q Did you reach an agreement with respect to doing some additional mosaics?

A Yes, sir.

Q How many were there?

A Three.

Q What was your fee for this work?

A $1140 or $1180, I forget which it was.

Q What was the reason for the difference between the fee on the latter work and the fee in this work?

MR. FLEMING: I object.

THE COURT: Sustained.

Q Were there four pictures involved in those mosaics?

A Yes, sir.

Q By the way --

THE COURT: It's completely immaterial, Mr. Devorkin.

Q By the way, are you receiving a fee to testify today?

A Yes, sir.

Q How much is the fee?

A $200 a day.

Q Mr. Woodward, showing you Government Exhibit 1100-A, B, C and D and 1101-A, B, C, D, E, F, G, H for identification, can you recognize them?

A Yes, sir. These are duplicates of the photographs you gave me to mosaic of this photography.

Q How can you tell they are duplicates?

A I recognize them, but I signed them when I took the duplicate set.

Q Did you compare the duplicate set to these?

A Yes, sir.

Q They are the same?

A Yes. I compared the numbers and the visual image.

Q The duplicate set was also certified?

A Yes, sir.

MR. DEVORKIN: Your Honor, with respect to Government Exhibit 1100-A and B, records of the Department of Agriculture of the United States show that these are photographs of Levy County from 13,750 feet. They were taken by Pennsylvania Aerial Surveys, Inc., 13112 South Dixie Highway, Miami, Florida by a Smith aerial camera, body number 31-122, lens number 140022. Calibrated focal length, 208.08 millimeters.

MR. FLEMING: When were they taken?

MR. DEVORKIN: A and B were taken in 1963. 1100-C was taken in 1970 of Levy County from 20,000 feet by Park Aerial Survey, Inc., Louisville, Kentucky, with a Park camera, number 100, with a Wilde Aviogon lens 209 with a calibrated length of 152.46 millimeters.

1100-D was taken in 1974 of Levy County, Florida by Mr. And Mrs. Blanton from 13,750 feet between 1 and 4:50 p.m. in clear weather with a Park camera, Cohn 103, Wilde Universal Aviogon lens number 459, with a calibrated focal length of 1553.12.

1101-A was taken in 1964 for the Department of Agriculture --

MR. FLEMING: I'm sorry.

MR. DEVORKIN: For the Department of Agriculture, as are all of these exhibits, of Marion County from 13,750 feet by Park Aerial Survey, with a Park camera number 71 with a C.P. Goerz Aerotor lens, number 774554 with a calibrated focal length of 210.15 millimeters.

1101-B through G were taken for the Department of Agriculture of Marion County, Florida in 1970.

MR. FLEMING: Do you have a date?

MR. DEVORKIN: In 1970.

MR. FLEMING: A month?

MR. DEVORKIN: In January, 1975, by Toler Aerial Mapping Service, Odessa, Texas with an Aviogon camera, number H61M5-360 with a Planigon lens 360. Those were taken from 25,000 feet.

MR. FLEMING: I'm sorry, what height?

MR. DEVORKIN: 25,000.

1101-H was taken for the Department of Agriculture in 1972 of Marion County.

THE COURT: Wait, B through G are 1970 photographs, all of them?

MR. DEVORKIN: Yes.

THE COURT: Go ahead.

MR. DEVORKIN: 1101-H was taken for the Department of Agriculture.

THE COURT: The year?

MR. DEVORKIN: In 1972 of Marion County, Florida from 20,000 feet by Mr. And Mrs. Blanton in clear weather between 2 and 2:50 p.m. with a Park camera Cohn 104, Ross wide angle express lens number 460, calibrated focal length 153.31 millimeters.

Q Mr. Woodward, are you familiar with the cameras and lenses I have just recited?

A Yes, sir.

Q Are those all standard mapping cameras and lenses?

A Yes, sir.

MR. DEVORKIN: I will offer those exhibits at this time, your Honor.

THE COURT: Any objection?

MR. ARKIN: Objection.

MR. FLEMING: I have an objection.

MS. CROSS: Yes.

THE COURT: Do you want to have a voir dire?

(Continued on next page.)

MR. FLEMING: I do not, your Honor. The basis of my objection is based on the representation made by Mr. Devorkin.

THE COURT: We will have a side bar.

(At the side bar)

THE COURT: What is the objection?

MR. FLEMING: Your Honor, I believe from this letter, which is part of the 3500 material, that they are going to make a mosaic, that these Levy and Marion County I guess are adjoining and they are going to make a mosaic of both counties off these photographs.

They are photographs of Levy County taken in 1963, that will be joined with photographs off Marion County taken in 1964.

There second mosaic will be 1970 photographs for both counties, although I don't know the dates. They are different times, I just know that one was in January, but finally the third mosaic will consist of Leo County in 1974 and Marion County in 1972 and at different heights.

MS. CROSS: They were different at different heights with different calibrated focal lengths in the camera, even the ones they are going to put into the same mosaic.

MR. DEVORKIN: Let me explain, your Honor, what was done.

Rainbow Lakes sits astride two counties, I believe, Levy and Marion. There are two different agencies of the Department of Agriculture that were the only agencies we could find that took pictures of Florida in any of the years relevant to this case.

So we went to those agencies and we got whatever pictures they had of Levy County and whatever pictures they had of Marion County with the closest possible years that existed.

So there are three different mosaics. Some of them were taken at different heights, but to jump ahead a bit, when they were all assembled they were all brought to the same scale, so in a sense the same process that Mr. Woodward performed was performed on these mosaics and the mosaics we will offer were all of one scale, which I think was one inch is a half mile.

Now, what he did was he assembled all the pictures, the way he has described for Levy County in 1963 separately and then he assembled all the pictures for Marion County, which is right next door, for 1964.

The difference is eight months between the two. If they were in a different scale because of the altitude he blew them to the same scale so that the scales matched at that point and then he matched them, he matched the physical features and the lines so they fit together and then he printed the entire mosaic.

When he printed the entire mosaic he put -- by direction he put a dashed line at the place where -- he put a code on the map where on one side of that line is 1963 and on one side of the line is 1964.

For 1970 I think the pictures for both counties are taken -- both are taken in 1970 for that year.

MR. FLEMING: What months?

MS. CROSS: Yes.

MR. DEVORKIN: Levy County was taken in November 1970 and Marion County was taken in January 1970.

MR. FLEMING: That is ten months.

THE COURT: Eleven months.

MR. DEVORKIN: Mr. Woodward went through the same process, he insured that the photographs taken at the same time were fitted property and the others taken at the different time were fitted property.

THE COURT: That isn't Mr. Fleming's point.

MR. DEVORKIN: I understand. He put then to the same scale and matched them. That brought us through 1970, which is some years after Rio Rancho began to be sold.

We wanted to show the most recent pictures we gathered of what Rainbow Lakes looked like and the pictures we were able to get were '72 and '74 and Mr. Woodward went through the same process, again putting the dashed line on it.

THE COURT: What good is that, putting a dashed line?

MR. DEVORKIN: Two things, your Honor. When you look at the mosaics, as I think you have to do, for the purposes that we are offering the mosaics, I think the process is acceptable because it shows --

THE COURT: What are you offering them for?

MR. DEVORKIN: We are offering them to show the amount of development and where it was located in Rainbow Lakes.

THE COURT: Part in '72 and part in '74?

MR. DEVORKIN: Right, but the jury will be able to see which is which.

THE COURT: Not if they are in one picture.

MR. DEVORKIN: You can tell, your Honor.

THE COURT: I know that, but it is being given to them as one picture. I don't care whether you put a dotted line around it.

MR. DEVORKIN: I agree, but they are being told which is for which years.

THE COURT: And I am saying it is immaterial. I am looking at one picture.

MR. DEVORKIN: But when you look at the picture --

THE COURT: Why don't you do it in separate pictures?

MR. DEVORKIN: I will tell you quite candidly.

THE COURT: The last one is out.

MR. DEVORKIN: If we did it as a separate picture, Mr. Fleming would be saying it's a separate picture, and we can't show it.

MR. FLEMING: Don't anticipate what I would do. I am objecting to this.

MR. DEVORKIN: We were trying to counter any possible objection.

THE COURT: But you haven't come up with an acceptable picture. It may not be your fault, but that does not put it in.

MR. DEVORKIN: But I want them to look at the mosaic --

THE COURT: If you are giving the jury one picture and you are drawing a line around it and saying you must remember this half is '72 and this half is '73, I say it's out.

MR. DEVORKIN: It says that right there.

THE COURT: You don't listen to me, do you. I will repeat myself.

I know it says it there, but I am saying if a jury looks at one picture, they are seeing one and the fact that you put marks around it and say now remember, jury, this half is '72 and this half is '73 -- I say it is out.

MR. FLEMING: It is actually '74, Judge, two years.

THE COURT: Now we are down to the only one that is close is 1970 and that is what?

MS. CROSS: That is ten or eleven months, from January to November. I would say the same thing.

THE COURT: Do you have any proof as to what building went on there between January and November from your clients to indicate there was large changes?

MR. DEVORKIN: There wasn't any, your Honor. That's the purpose. When you compare the '70 picture of Levy County to its counterpart in 1972 or its counterpart in 1973 you can see the difference.

THE COURT: Please, Mr. Devorkin. I will

not let a single picture go before this jury which they see with their same two eyes as one and tell them that they now must in their mind's eye separate it into two.

That is a completely unfair way of presenting it, even though you are marking it up for them. They look at it and they see it as one forgetting the markings on it so that is out.

MR. DEVORKIN: What we will do, then, your Honor, if I can physically mechanically do it, I will endeavor to cut it along the lines so they can have it separately.

What we are trying to compare for them, really -- we were trying to give them all of Rainbow Lakes at one time.

THE COURT: You can't because your time sequence is out of sinc, I think it is called.

MR. DEVORKIN: We are trying to show them over the period of time right up through to today when the defendants were making representations about Rainbow Lakes to Rio Rancho purchasers, that this is what Rainbow Lakes looked like.

THE COURT: Incidentally, what have you got in this record about this representation that lets this come in?

MR. DEVORKIN: It is in the script. Mr. Mandel testified about it. I think Mr. Lederman testified about using that for representation. Mr. Zaknich testified about it. Some of the victims testified that they were told this, that there was a successful community development.

THE COURT: Which victims?

MR. DEVORKIN: I believe Mrs. Henry testified about it. I believe there were a couple of others who testified about it.

MR. FLEMING: Just one.

MS. CROSS: Most of that was representations that there was a community in Florida.

MR. DEVORKIN: There was at least one.

THE COURT: One victim testified.

MR. DEVORKIN: I will have to check my notes --

THE COURT: Hold this and I want from you before I let any of this Rainbow Lakes in, I want from you the citations in the record that you want me to look at that justifies this coming in.

MR. DEVORKIN: There is a mechanical problem, your Honor.

Mr. Woodward is on the stand now. He comes from sixty miles out on the Island.

THE COURT: So what?

MR. DEVORKIN: Can I just finish, please? Can we go through and identify what he did and then reserve your Honor's ruling?

THE COURT: I don't want the jury to see it.

MR. DEVORKIN: I won't show it to the jury at this point, I agree, but I would like to get Mr. Woodward's testimony completed because he has got business commitments that he made and I would like to as much as possible try to get him off the stand today.

THE COURT: What about it?

MR. FLEMING: What is he going to do, testify just the way he testified to the others?

MR. DEVORKIN: In essence that is right.

MR. FLEMING: I have no objection to putting in the foundation testimony, your Honor.

THE COURT: All right.

d t2b

(In open court)

CONTINUED DIRECT EXAMINATON

XXX BY MR. DEVORKIN:

Q Mr. Woodward, what, if anything, did you do with the individual photographs for Levy County for 1963?

A We assembled those in the same fashion to prepare a mosaic.

Q After you prepared the mosaic of Levy County what did you do with that?

A We rephotographed the assembly to a common scale.

Q What was that scale?

A It was one inch equals a quarter of a mile.

Q What did you do with the individual photographs of Marion County, Florida for 1964?

A We prepared a mosaic from that similarly and rephotographed that to a scale of one inch equals a quarter of a mile.

Q The scale on the two was the same, correct?

A Yes, sir.

Q What did you do with the photographs for Levy County for 1970?

A The same procedure. We made a mosaic and then rephotographed it to one inch equals one quarter mile.

Q The photographs for Marion County 1970?

A We mosaiced that and photographed it to one inch equals one quarter of a mile.

Q And the photographs for Levy County 1974?

A Similarly a mosaic and a reproduction to one inch equals one quarter of a mile.

Q And the photographs for Marion County 1972?

A A mosaci an a reproduction to one inch equals one quarter mile.

MR. FLEMING: If your Honor please, if Mr. Devorkin's only purpose is to have the witness identify these as the mosaics, we have no problem with that.

THE COURT: All right. What are the numbers?

MR. DEVORKIN: In line with your Honor's ruling, perhaps I will give one part of it --

THE COURT: You are carrying a large photograph. I assume they are mosacis.

What are the numbers of them?

MR. DEVORKIN: 1104.

THE COURT: This is Government's Exhibit 11-- go ahead.

MR. DEVORKIN: 1104.

THE COURT: A mosaic, right?

MR. DEVORKIN: That is correct.

THE COURT: Putting together what? We will take your representation.

MR. DEVORKIN: It includes Levy County for 1963--

THE COURT: Which exhibit? Give me the exhibit, it is much easier.

MR. DEVORKIN: Just one second.

1100-A and 1101-A.

THE COURT: All right.

MR. DEVORKIN: Government Exhibit 1105 is a mosaic which includes 1100-C and 1101-B through G.

THE COURT: All right.

MR. DEVORKIN: 1106 is a mosaic which includes 1100-D and 1101-H.

Q Mr. Woodward, in these photographs, individual photographs that we have identified there are some pictures of bodies of water, is that correct?

A Yes, sir.

Q From one year to thenext there are occasions when the body of water has a white appearance over it, is that correct?

A Yes, sir.

Q What is the white on that body of water from your experience?

A The reflection of the sun based on the angle of the photograph.

MR. DEVORKIN: May I just have a moment, your Honor? xx

THE COURT: Yes.

(Pause)

MR. DEVORKIN: Will you mark this 1075-B.

(Government Exhibit 1075-B marked for identification)

THE COURT: Don't you want to get in the 100 and 1101 series before you go to this?

MR. DEVORKIN: I am sorry, your Honor, I thought I had offered those.

THE COURT: No. You have not offered them and they have not voir dired, I don't think.

MR. DEVORKIN: I offered them.

MR. FLEMING: We objected for the reasons stated at the side bar, if your Honor please. xx

THE COURT: We are talking now about 1100, 1101-A through 1101-H.

MR. FLEMING: I should add, your Honor, I am objecting also on the general relevance.

THE COURT: I will take them subject to

connection.

(Government Exhibit 1100-A, B, C and D and Government Exhibits 1101-A through H, inclusive, received in evidence)

Q Mr. Woodward, showing you what has been marked as Government's Exhibit 1075-B for identification, do you recognize it?

A Yes, sir, that is a reproduction of one of the mosaics, the 1975 mosaic that we previously made.

Q That is a smaller scale than 1075-A, correct?

A Yes, sir, approximately one inch equals two miles.

Q I am showing you a plastic sheet of paper which -- can we deem this to be 1075-C, the marking may interfere --

THE COURT: Put it on the back.

(Government's Exhibit 1075-C marked for identification)

Q Showing you 1075-C for identification, do you recognize it?

A Yes, sir.

Q What is it?

A It's an overlay to that mosaic outlining the built up areas.

Woodward - direct

Q Of a certain part of the mosaic?

A Yes, sir.

Q Would you place it on 1075-B the way the outline fits on 1075-B.

(Witness complies)

Q Would you take it down so that it fits on there the way it should?

(Witness complies)

THE WITNESS: There is a good chance that this tape will rip the photograph. Let me put it on this tiny little spit. This is not a good idea.

T3B.AM

eojb 1 Woodward - direct

Q Recently haveyou been to Albuquerque?

A Yes, sir.

• Q Have you flown over it in a helicopter?

A Yes, sir.

Q Are you familiar with -- there is a section of this mosaic which is Rio Rancho Estates, is that correct?

A Yes, sir.

Q This Exhibit 1075-C has been placed over a part of that section?

A Yes, sir.

Q Is there a machine in the field of aerial photography that is used to measure areas on an aerial photograph?

A Yes, sir.

Q What is that machine called?

A Planemeter.

Q Do you have a machine like that at Lockwood, Kessler & Bartlett?

A Yes, sir.

Q Just briefly how does that machine work and what do you do?

A It's a machine whereby we would measure an area that's irregular. It attaches to the center of the area. There are a series of wheels that will trace any outline that you force it to describe and it will measure the acre inches or square inches or miles, whatever you set it for of that irregular area.

Q Did you use that machine to measure the area you have outlined on Government Exhibit 1075-C for identification?

A Yes, sir, we did.

Q Did you also do the calculations by hand yourself?

A Yes, I did.

Q What was the figure that the machine produced as a result of its calculations of the area you have outlined?

A The machine produced 3,315 acres.

Q Your own hand calculations were what?

A 3,264.

MR. DEVORKIN: I offer 1075-B and C.

VOIR DIRE EXAMINATION

BY MS. CROSS:

Q Your attempt on this was to calculate the developed area of Rio Rancho, Mr. Woodward?

A To calculate an area that the U.S. Attorney asked me could I do that. In other words, we described out an area and he said could I determine the square miles or the acreage of that area.

Q He asked you to determine the acreage of this area here, is that correct, the one outlined in red?

A Correct.

Q If you would direct your attention to an area somewhat to the northwest, can you recognize that as houses up there?

A Yes, I can.

Q That is not included in the area that the U.S. Attorney asked you to calculate the acreage of, isit?

A No, ma'am.

MS. CROSS: I would object, your Honor, to that exhibit.

THE COURT: This is a good time for the morning recess. The jury may be excused.

(Jury left the courtroom.)

THE COURT: What did you say the scale of this was?

THE WITNESS: Approximately one inch equals two miles.

THE COURT: I gather this is a mosaic just of Rio Rancho property?

MR. DEVORKIN: I am sorry, your Honor.

THE COURT: Is this a mosaic just of Rio Rancho property?

MR. DEVORKIN: No, it is the same mosaic as 1075-A, just a smaller scale. It is easier to handle.

THE COURT: The same as --

MR. DEVORKIN: 1075-A, the large one, but in a smaller scale so it can be handled.

THE COURT: What about this point that Ms. Cross raises that you omitted part of the developed property?

MR. DEVORKIN: That's true. The unit 11 section is not calculated.

Mr. Woodward described on this an area surrounding the other developed area including many areas that have no buildings on them whatsoever. I believe he tried to include the industrial park --

THE COURT: He did what you told him to do, he said.

MR. DEVORKIN: Yes.

THE COURT: Ms. Cross says that you left out part of the developed area.

MR. DEVORKIN: We left out unit 11. We can add unit 11.

THE COURT: That has to be done for the purpose for which you are offering it.

MR. DEVORKIN: Beg your pardon?

THE COURT: Don't you think that has to be done for the purpose for which you are offering 1075-B?

MR. DEVORKIN: We will do that.

THE COURT: What do you mean we will do that? You don't have the witness here. He is not up in his plane. He hasn't used his -- you have to be up in the plane to do that.

THE WITNESS: No, that's done on the ground with the machine right on that photograph.

THE COURT: So you can do that?

THE WITNESS: Yes, I can.

THE COURT: I sustain the objection until that's done.

MS. CROSS: I have a further objection that that is identical to the large picture and it would seem to me that if we are going to have two identical pictures, we might as well do it on the large mosaic.

THE COURT: You would rather have it on the large picture than the small picture?

MS. CROSS: Yes, because they are comparable. This is an exact duplicate of the large one.

MR. FLEMING: I assume the only purpose of offering this is to establish the number of acres developed?

THE COURT: That's right.

MR. FLEMING: It seems to me it would be more precise to do it on the one inch to half mile chart.

Another point also, as I understand it, unit --

THE COURT: I have already sustained the objection on the basis that the overlay does not include all the developed area. That's number one.

Number two, I think it would be easier to put it on the large picture so we deal with only one picture. Actually all you are using it for is for the number of acres, that's all, you don't need a pictorial representation of that.

THE WITNESS: Your Honor, may I say something?

THE COURT: Not to me, no. We will have a recess and you can talk to Mr. Devorkin and tell him the question you want him to ask you.

THE WITNESS: Okay, thank you.

(Recess.)

(Continued on next page.)

(In open court, jury not present.)

THE COURT: Yes.

MR. FLEMING: Your Honor, with regard to the transposition of Exhibit 1075-C, which is this overlay upon which the drawing appears, we think in addition to having it done on the larger chart, and in addition to it including the actual building in unit 7 brought out by Ms. Cross, unit 7 brought out by Ms. Cross, unit 11, there is other development on the property which we think should be shown.

For example, my understanding is power lines and water run from unit 16 across unit 11 into unit 7 and also run up to unit 17. Now, that's certainly part of development and part of capital investment.

In addition, of course, all of the roads are bladed on the entire property and we think if a fair representation of what Rio Rancho has done to develop this area is to be made, it has to include more than just present home sites and should include acreage devoted to the stringing of electrical wires and water systems and roads.

THE COURT: No, I overrule that objection. As long as it's clearly delineated to the jury that this only includes buildings on one side on your examination of the witness, or the representation made by the government that it doesn't include the areas to which this is advanced.

MR. KAUFMAN: Your Honor, one other matter. During the recess both sides agreed that the large photograph can stay the same size. The defense and the government are willing to continue that photograph at the same size without cutting it down to take off the additional land areas not reflected in the first two mosaics.

THE COURT: You mean 1075-A?

MR. KAUFMAN: Correct, your Honor.

THE COURT: Is that correct?

MR. ARISOHN: It's correct.

THE COURT: Mr. Fleming?

MR. FLEMING: Yes, sir.

THE COURT: All right, 1075-A then is in as is. 1075-B is out. 1075-C is out, but will be redone to be an overlay to 1075-A, including additional areas which I assume the government and the defense counsel will agree should be added. I don't want him to come back and find out that Mr. Devorkin designated what should go in and the defense counsel will get up again and say I omitted this.

So, we will have to have an agreement on the area that's to be covered. If you can't agree, I will look at it and decide.

XXX (Government's Exhibit 1075-A received in evidence.)

MS. HYNES: Your Honor, as I understand it, there is an area, a building area, in unit 11 that should be included and there are four houses in unit 7 which do not appear on that map.

THE COURT: Is that all, Mr. Arkin?

MR. ARKIN: No, there are also houses in unit 17.

MS. CROSS: In unit 17, I don't believe the houses are included in that. The picture was taken before the houses were built.

THE COURT: I am not going to have them go out and take a new picture, Ms. Cross. We will take it as of a date.

MS. HYNES: Just so the record is clear, the parameters that were used in calculating this area were very generous. It did include areas that did not have buildings.

THE COURT: That's isn't their point. That doesn't excuse the failure to include areas that did have buildings.

MS. HYNES: I agree.

THE COURT: So we don't have to have that gratuitous remark by you to make the record absolutely clear. The record is absolutely clear you omitted areas that should be in.

MS. CROSS: May I suggest that we have two overlays, one of an area that the government suggests which includes the houses and one that we will supply Mr. Woodward with information for which includes the areas of water and power lines, and we can -- and gas lines and then we can make the difference and distinction.

THE COURT: You make your own overlay if you want.

MR. FLEMING: He has the machine. That's the problem.

MS. HYNES: They can put in their own case if they want to hire somebody.

THE COURT: You can make your own .

MR. FLEMING: I think we will pay him to do it, but he has this planemeter or whatever it's called.

THE COURT: Okay, if you pay him to do it, let him do it for you.

MS. HYNES: The question is whether we have to start introducing defense evidence on the government case.

THE COURT: Nobody is asking you to introduce it, Ms. Hynes.

MS. HYNES: That's what I understood the import was.

THE COURT: I'm sorry, that's not what Mr. Fleming asked. He asked if he could hire Mr. Woodward, and he is willing to pay him, to draw an overlay that would include the areas to which utilities have been drawn, but there is no housing. There is no objection to that on the part of the government?

MS. HYNES: No, I don't, as long as the information is provided, but we are not agreeing that that's going to be offered on the part of the government's case.

THE COURT: Nobody asked you to, Ms. Hynes.

MS. HYNES: That's the next step, obviously, your Honor.

THE COURT: I'm sorry, nobody asked you to. When we get to that next step, then we'll worry about it.

Bring the jury back.

MR. DEVORKIN: Before the jury comes back, could I ask a clarification on one thing? Your Honor's direction on the movie was you want to look at it without hearing anything about it first.

THECOURT: That's right.

MR. DEVORKIN: Then I will save Mr. Woodward's testimony on that for another time, then.

THE COURT: All right.

(Jury present.)

THE COURT: Go ahead.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Woodward, just a couple of other things. Have you ever done work for the Department of Agriculture?

A Yes, sir.

Q Aerial photography work?

A Yes.

Q Are the standards and requirements and procedures similar to those you have described for the Geological Survey?

A Yes. They work together. It's almost identical.

MR. DEVORKIN: I have no further questions at this time.

THE COURT: Cross examination.

MS. CROSS: Nothing, your Honor.

MR. FLEMING: I have nothing, your Honor.

THE COURT: You may step down. Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. DEVORKIN: The government calls Al Pierce.

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ALBERT I. PIERCE, called as a witness, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed?

THE COURT: You may proceed.

DIRECT EXAMINATION

XX

BY MR. DEVORKIN:

Q Mr. Pierce, where do you live?

A Albuquerque, New Mexico.

Q How are you currently employed?

A I am the executive director for the Middle Rio Grande Council of Governments.

Q How long have you held that position?

A As executive director, approximately five years.

Q What position did you hold before that?

A Assistant director.

Q Before that?

A I was head of the data management and research division of the organization.

Q And before joining the council of governments where did you work?

A I was employed teaching at the universities and technical vocational institution.

Q What subjects did you teach?

A Upper level management courses.

Q What is your educational background?

A I hold a masters degree in industrial management, business administration.

Q Before you began teaching where did you work?

A I was with the Air Force for twenty years.

Q At what rank did you retire?

A Lieutenant Colonel.

Q You are testifying under subpoena today?

A Yes, sir.

Q Before testifying today had you and I spoken?

A Yes, sir.

Q For approximately how long all told?

A I would imagine and aggregate of four to five hours.

Q Prior to that did you speak to any representatives of the United States Attorney's office anyplace?

A Yes, sir, in Albuquerque.

Q For about how long?

A In an aggregate of approximately two hours.

Q Have you spoken with any attorneys connected with AMREP Corporation in connection with this case?

MR. ARISOHN: Objection.

THE COURT: Sustained.

Q Would you tell us briefly what the Middle Rio Grance Council of Governments is?

A It's an association of local, general and special purpose units of government in the four county area, Torrence, Sandoval, Valencia and Bernalillo. It's called State Planning and Development District 3 in New Mexico.

Q When you say special and multi-purpose jurisdictions, what do you mean?

A General purpose units of government are those municipalities and counts which are entities under state law.

Special purpose units of government are such entities as the school district, Albuquerque Metropolitan Flood Control Authority, Middle Rio Grande Conservation District. Those entities created under state law which have special purposes and special fractions.

Q When did the council of governments begin?

A It was in the formative stage in 1966. It formally went into operation in 1967.

THE COURT: This is a state created body or is it a voluntary organization?

THE WITNESS: It's a voluntary organization, sir. It is created under state statutes.

Q Are there any provisions now for private members?

A Yes, sir. There are associate memberships which were created by the board of directors.

Q When were those created?

A Approximately two years ago.

Q What do you have to do to become an associate member?

A The board stipulated that the associate membership was for quasi public organizations which have an involvement, an impact on long range planning and development.

Examples, the Public Service Company of New Mexico, telephone company, gas company, these kinds of organizations, and also other entities, communities which have a potential for ultimate incorporation or do have an impact on the total development of the area.

Q Is Rio Rancho an associate member?

A Yes, sir.

Q Since when?

A Approximately two years ago.

Q Did they pay any kind of fee to join?

A Yes, sir.

Q What was that?

A They participate at $500 a year along with the other local governments.

Q Is that the fee for associate members?

A It's a minimum fee for membership in the council of governments.

Q What if anything does an associate member receive from the council of governments?

A Participation in its long range planning process for the area; participation in the association as a means or vehicle for inter-governmental cooperation on issues and matters related to long range development and those which do not necessarily involve any particular jurisdiction.

Q Does an associate member receive copies of all the reports published by the council?

A Yes, sir.

Q How is your organization actually funded?

A Local governments provide the basic funding. There is some participation by the State of New Mexico and then resources from the federal agencies that are involved in encouraging or assisting local governments in cooperative long range planning.

Q You said, I believe, that your organizations involved in a long range planning process for the regional area, is that correct?

A Yes, sir.

Q Do you actually implement these plans that are developed, or what's your role?

A Our staff role, as far as I am concerned, is to implement the -- to execute the policies set forth by the local elected officials who make up our board of directors.

The organization itself does not -- is not an implementing agency,its a cooperative planning effort among the local governments.

Q It's up to each entity to implement those aspects of the plans that they deem appropriate?

A Yes, sir. Once the plans are formed as a collective group of local plans, then each governmental entity as constituted under law has its own implementation responsibilities.

Q You said the name of your district of special district?

A New Mexico State Planning and Development District No. 3.

Q Is there a subdistrict within that of any kind?

A You may be referring to area planning jurisdictions which we have defined in accordance with federal guidelines as those areas which have a high potential for urbanization within the next twenty years.

We have two in the district, APJ1 and APJ2.

Q What does APJ1 include?

A It is the area along the Rio Grande from above the town of Bernalillo to south of the city of Berlin in Valencia County.

APJ2 is the area surrounding the communities of Grants and Mallan in Valencia County to the West.

Q Does APJ1 include Rio Rancho Estates?

A Yes, sir.

Q You responded to Judge Metzner's question that your agency is recognized in some way or another by the State of New Mexico, is that correct?

A Yes, sir.

Q What are the actual local or state laws that you as an association operate under?

A There are three basic state statutes. The first is the statute which provides for local government entities to form cooperative agreements for specific purposes. This is a joint powers act. The other is contained in a municipal code which provides for the formation of area-wide planning organizations and commissions, although the council of governments is not in the status of a commission.

Also a regional planning act of the state which provides the vehicle for state assistance to the local governments in their planning efforts.

Q What effect, if any, did the federal statutes have on your operation?

A Federal agencies provide assistance to local governments for cooperative area-wide planning by virtue of their specialized interests.

For example, the Department of Transportation assists local governments in their long range cooperative planning efforts. So does the Department of Housing and Urban Development under its so-called Section 701 planning program, assistance program.

We are also an economic development district designated by the Economic Development Administration and EDA provides assistance with these planning efforts.

Q Do any of these federal agencies require regional-wide planning of some kind in order to obtain federal funds?

A They set forth certain conditions leading to something called certification. This is basically the concept that they are providing assistance to all the local governments to plan cooperatively together. This leads to a certification which is a condition of capital grant assistance.

Q What do you mean capital grant assistance?

A Those grant funds provided by the federal agencies for capital improvements such as roads, transportation systems, utilities systems, water, sewer, et cetera, housing systems.

Q What are your duties as executive director of the council of governments?

A Primarily th execute the policies as set forth by our local elected officials of the board; to of course direct the staff efforts in complying with not only the federal rules, regulations and requirements in the planning program, but also directing staff efforts in compliance with the policies set forth by the local governments.

We also provide a great deal of technical services or assistance to our member local governments as their staff.

Q What were your udties as assistance director?

A Principally the same. Somewhat limited or specializing in program development, program implementation.

Q What were your duties as head of the data management and research section?

A Primarily maintaining the portion of the operation which provides the information base on a continuous basis to support all of our planning efforts.

Q What, if any, staff works for council of governments?

A I am sorry.

Q What kind of staff do you have working for you?

A It's a multi-disciplinary staff. It involves a wide range of specialties. For example, we have professional planners, transportation, utilities. We have engineers on our staff. We have a number of planning specialists and other specialist personnel in terms of administrative support, graphic support and so on.

Q How large is your professional staff?

A The professional staff would approximate twelve to fourteen people on the average.

Q Do you presently maintain any kind of data collection system?

A Yes, on a continuous basis.

Q Will you describe what that system entails?

A Primarily maintaining surveillance over all of the activities in the area in terms of socioeconomic activities, estimates of activities each year and then also forecasting.

We are also maintaining inventories over physical development and operational activities such as traffic counts, vehicles, miles of travel and so on in our transportation planning program.

Q What kind of socioeconomic data do you monitor?

A Primarily population, its characteristics, its special distribution or location, housing, other related activities related to the physical location of place of residence and place of work.

Q Do you rely on that data in making your regional plans?

A Very heavily, yes, sir.

Q What are your sources for this data?

A We make a concerted effort to use the factual data which are generated by normal local government operations.

For example, the assessor records are constantly monitoring both land and improvements thereon as a basis for taxes.

We use school enrollment data from our public school systems.

We use vehicle ownership records from the state motor vehicle department.

And other sources similar to that which those data are derived from normal local or state government operations.

Q Do you also use building permits in that process?

A We use building permits, employment security commission data.

Q Have you ever used aerial photography in your planning work?

A Yes, sir.

Q For what purpose and in what way?

A Both for maintaining surveillance over growth activities, the trends of development because the aerial photography provides an excellent resource for ascertaining the type, kinds and location of development both from residential and commercial activities.

We use aerial photography a great deal in many of the long range planning efforts and forecasting of possible special distributions in the future.

Q When you say you use it to determine types of housing, how do you actually do that?

A We can pretty well ascertain from any of the aerial photographs that we have, the techniques that we use, the types of housing and in very general terms as far as single family, multi-family and the approximate size by comparing this with the assessor's data, ground truth, so to speak, we can maintain a relatively accurate

rate inventory of the type and condition of developments.

Q Where do you get your aerial photograph from?

A We use a wide variety of sources. Many of the federal agencies operating in the area provide aerial photography or have aerial photography done for certain specific purposes.

The quasi public service companies, again such as telephone, public service, gas, provide aerial photography.

Many of the local agencies have specialized aerial photography.

In a sense we are using all that is available within the area.

Q From your experience is aerial photography a reliable way of determining the amount of land -- the amount and direction of growth in the area?

A Yes, sir.

Q Do you make any current population analyses or projections?

A Yes, sir.

Q How frequently do you make current analyses?

A We try to maintain our surveillance on an annual basis, that is, updating our estimates of population and its location on an annual basis.

Q That would be of the current population at any given point in time?

A That is correct.

Q How do you actually make those current estimates?

A The technique which we generally employ uses the existing data from local government operations, as I indicated previously.

We use the factors and relationships that are derived from the latest census. In this case 1970.

By knowing the characteristics of households within each small area, the number of school children that are enrolled from that area of residence, the building permits, other information related to housing, we can make reasonable estimates of the population within each small area and in the aggregate for the entire area or areas.

Q Do you also make population projections, that is looking toward the future?

A Yes.

Q How frequently do you do that?

A Whenever the trends of development suggest or other changes suggest that our population forecast should be modified.

Q In the past how frequently have you made those projections?

A Well, I suppose on the average these have been re-evaluated every two to three years and modified in each instance.

Q That is for purposes of assisting you in your planning process?

A Yes, sir.

Q In making these population analyses or projections, do you work with any other agencies?

A Yes, the U.S. Bureau of Census and, in the case of the State of New Mexico, the University of New Mexico, the Bureau of Business and Economic Research, which performs that function for the state as a state agency.

Q Is the University of New Mexico Bureau's of Business and Economic Research designated by the state to perform that function?

A Yes, sir.

Q Would you explain how that process involving the Bureau of Census and the University of New Mexico works?

A Starting with the national level, the Bureau of Census and other federal agencies make forecasts for the future related to population throughout the United States. That also involves an allocation of population to the various states.

Based on the allocation to the state, then those forecasts are suballocated to the various counties.

Q Who does the suballocating in New Mexico?

A The Bureau of Business and Economic Research.

Q They give you figures for the counties in your district?

A Based on their statements of where the population in future years might potentially be distributed.

Q Do you work with them in making these suballocations?

A We work very closely with them particularly in making suballocations of the county allocations especially distributed there our four-county area.

Q In other words, when you work with them to make these allocations for your four counties, do you then go on and make allocations within your four counties?

A Yes, sir.

Q Are you familiar with a document called the 1985 land use plan?

A Yes, sir.

Q What is it?

A This was a land use plan prepared in the early 1960's, really in 1962, 1963 time period, and it was done primarily to serve the urban transportation planning effort at that time.

Q Who was it done by?

A This was done by the city of Albuquerque's planning department.

Q What is the relationship between the council of governments and the Albuquerque city planning department?

A Well, it is a very close working relationship. The city of Albuquerque is the largest member government of the association and our professional staff relationships exist with all the member government staff so it's a very close working relationship once again.

Q Do they -- excuse me -- does the planning department of the city of Albuquerque make progressions for direction of growth and amount of land within Albuquerque?

A Yes, sir.

Q Does your association rely on those calculations and progressions?

A Yes, sir.

Q Do you know who George Carruthers is?

A Yes, sir.

Q Who is he?

A He is the director of the planning department for the city of Albuquerque, a city employee.

Q What is George Carruthers' reputation in the area as a planner?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Do you work closely with Mr. Carruthers?

A Yes, sir.

Q Has the council of governments ever used the 1985 land use plan?

A Yes, sir.

Q In what sense have you used it?

A Again it's the basis for the major street and highway plan, which was developed at about 1963, 1964 time period. Subsequently approved, adopted by the local elected officials.

That particular plan was one of a series developed throughout the United States, one in each urban area coincident with the development of the interstate system, part of our total transportation network.

It is our obligation under the council of governments cooperative urban transportation planning program to maintain that plan current to reflect local policies and trends of development.

Therefore, this becomes -- this 1985 land use plan was the basic reference and the basis for the development of the original transportation plan which we now maintain.

Q Did you continue to use it as a reference?

A Yes, sir.

Q Does that include for trends in growth and directions of growth?

A Yes, sir.

Q Let me show you Government Exhibit 60 for identification and ask you to take a look at it and tell us whether you recognize it?

A Yes, sir, I recognize the plan.

Q What is it?

A Called the 1985 land use plan, Albuquerque, New Mexico, dated February, 1964.

Q Is that the plan you have been referring to here this morning?

A Yes, sir.

Q Done by the Albuquerque city planning Commission?

A Department, yes, sir. Approved by the commission and adopted by local officials.

Q When the council of governments first came into existence, was there any other similar planning document or data reference available for your planning use aside from the 1985 plan?

A Not similar, no, sir.

Q At the time it was issued and used by the council of governments, was it considered accurate and reliable?

MR. FLEMING: Did he say issued and used?

Q The plan was issued and then used by the council of governments?

MR. FLEMING: Objection to the form of the question.

THE COURT: Sustained.

Q Was it considered accurate and reliable?

THE COURT: He objects to the form of your question. Rephrase it.

Q At the time the council of governments used the 1985 land use plan, did you consider it accurate and reliable?

MR. FLEMING: Objection to the form of the question.

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Di you rely on the 1985 plan in making your own plan?

MR. ARKIN: Objection.

MR. FLEMING: He has been asked and answered those questions, your Honor.

THE COURT: That's true. A plan that's produced in 1964 can't be accurate. It is a projection. You can ask the witness whether he used it among other tools that he used for his work, but that's all you can do.

He can't testify that in 1964 a projection in 1985 is accurate. I don't think he would even try to make that assertion from the witness stand.

Q The 1985 plan also included, did it not, analyses of past growth of Albuquerque, is that correct?

A Yes, sir, with one qualification, if I may. Those analyses are contained in supplementary documents and summarized in this one.

Q It also included analyses of vacant developable land in Albuquerque as of the time of its issuance?

A Yes, sir, there is an inventory of not only vacant land but developed land and the types of development.

Q Those aspects of the plan were used by the council of governments?

MR. FLEMING: Object to the form of the question. The witness has testified to how he used this particular one.

THE COURT: Sustained.

Q Were those aspects of the plan that included analyses of current information, information as of that date of its issuance, vacant land, past growth trends in the city of Albuquerque that were not looking forward, but were looking at the present time or backward, were those aspects of the plan considered reliable and accurate by the council of governments?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q But I take it there was nothing else similar to that that was available for your use in the late '60's?

MR. ARKIN: Objection.

THE COURT: Overruled.

A No, sir, not as a formal inventory. Again I would refer back, if I may, to the assessor records and other similar records which we use in our surveillance activities.

Q Showing you Government's Exhibit 44 for identification, do you recognize it?

A Yes, sir.

Q What is it?

A 1995 development patterns, a document produced by the middle Rio Grande council of governments as part of the urban transportation planning process and it was intended to reflect past, current trends of development as of this time and also some modified future forecasts, aggregate forecasts that we had made.

Q Modifying earlier forecasts that had been done, is that correct?

A Yes, sir, prior to or almost simultaneously with the productionof this document and just prior to we had reevaluated the fugure forecasts.

Q When was this document, Government's Exhibit 44, published?

A May, 1972.

Q Have there been reprintings of it since then?

A The second reprinting was in 1974. The third printing in February of 1975.

Q How was thatdocument, Government's Exhibit 44 for identification, actually prepared?

THE COURT: Wait a second, when you speak about second printing. Does that mean you have made changes in the second printin?g

THE WITNESS: No, sir, there were no changes.

THE COURT: What were the dates again, May, '72?

THE WITNESS: May, '72, January, 1974 and February of 1975.

THE COURT: Thank you.

Q How was that document actually prepared?

A It is staff work. It was based -- and these assumptions are all stated in the document -- but primarily based on the trends of development that had been occurring in the past ten years. The zoning documents which defined the types of developments which may occur at any part of the area, the condition of neighborhoods and so forth, which would indicate where choices might be made regarding development.

Therefore, based on those assumptions, we were allocating future year projections in five year increments to various subareas or small areas within the urban area.

Q The document also includes analyses of current facts, correct?

A Yes, sir.

Q Population and other socio-economic statistics, is that correct?

A Population, housing, vehicle ownership.

Q Did you use the data that you have already described to make those current statements that are in that document?

A Yes, sir.

Q That work was done by the staff under your supervision?

A Yes, sir.

MR. DEVORKIN: I offer Government's 44, your

Honor.

THE COURT: Where is it?

MR. DEVORKIN: It is right there.

THE COURT: So what? Do you want me to get down and give it to the clerk, Mr. Devorkin?

MR. DEVORKIN: I believe the defendants have a copy of it.

THE COURT: I am not worried about the defendants. I am worried about the clerk.

I think it is a good time to adjourn for lunch. See you at 2:15.

(Jury left the courtroom.)

THE COURT: Any objection to Exhibit 44?

MR. ARKIN: Your Honor, Ms. Thompson informs me that the government had originally intended to tender only portions of that exhibit. Now, I would like to take the luncheon recess and discuss with Ms. Thompson whether we would have any objection to the balance of it. Initially I don't think we would, but I want to discuss it with her.

THE COURT: All right. See you at a quarter after two.

(Luncheon recess.)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury not present)

THE COURT: Are there some applications?

MR. KAUFMAN: Yes, your Honor, there are two problems that I would like to bring up with your Honor before George Carruthers testifies this afternoon.

One is that Mr. Carruthers, when he is on the stand, we will be seeking to introduce the 1985 land use plan that the planning department issued in 1964. That document was in the company's possession and produced in the grand jury pursuant to a subpoena.

Your Honor has ruled that the government should not produce as witnesses people who actually produced documents in the grand jury but presumably that much--the production of the document would be stipulated to.

When I offer the 1985 land use plan I would like at that time to make the representation to the jury that this was a document that was in the company's possession and I just want to --

THE COURT: Mr. Arkin.

MR. ARKIN: If your Honor please, if the

company produced it, it may have been in our possession.

The problem with that kind of representation is one we have raised from time to time since the trial started and even before which is that that doesn't bring home knowledge to the individuals or to any particular individual.

The fact the company produced, it, I agree we produced it, no question about that.

But I am worried about that inferring knowledge on the part of the individuals.

THE COURT: He is entitled to show that you had possession of it.

MR. ARKIN: You meaning the corporation.

THE COURT: That is right.

MR. ARKIN: In that respect I agree with your Honor. I am only worried that that representation or stipulation, if you will, does not imply any particular knowledge of that report or its contents on the part of any individual involved in this case.

THE COURT: Mr. Kaufman.

MR. KAUFMAN: Your Honor, at this point the only representation that I will be making is that this was a report that was in the company's possession. I intend to say nothing else about it at this time. I don't think anything else need be said to the jury at this time.

MR. FLEMING: Which company?

Your Honor, which company is Mr. Kaufman referring to?

MR. KAUFMAN: AMREP.

THE COURT: AMREP.

MR. ARKIN: That is the parent corporation. We cannot be sure that it came from the parent corporation.

It certainly came either from Rio Rancho which is a wholly owned subsidiary or from AMREP. When the company produced its documents pursuant to grand jury subpoenas obviously searches were made in Albuquerque and in New York and it is not entirely clear in my mind, and I don't think it is in anybody's mind, whether it was in the possession of Rio Rancho or AMREP, the parent corporation.

Now, that is a fine point, but --

THE COURT: What did the subpoena call for?

MR. ARBIN: It called for those records in possession of AMREP, Rio Rancho, ATC and so forth.

THE COURT: You mean it was furnished without regard to the defendant who was furnishing it?

MR. ARKIN: In respect to the corporate

defendants, that is Rio Rancho or AMREP, I think that is largely true. I think Ms. Hynes would bear that out that insofar as the corporate defendants, production was made on their behalf and there was not a distinction made between the respective corporations in most cases.

THE COURT: I don't think it makes much difference.

MR. ARKIN: Considering that Rio Rancho is a wholly owned subsidiary of AMREP, it doesn't, but what happens is that say it was in Rio Rancho as opposed to AMREP possession, it highlights the problem which I have, which is that I wouldn't want the jury to have any feeling whatever that anything in any particular report, just because it was produced by the company, is within the knowledge of any individual defendant here.

THE COURT: That is not his function at this point in the trial, is it? I will let it in on the statement that this is a document that was produced from the files of the corporate defendants AMREP and Rio Rancho period.

MR. FLEMING: Would we be entitled, your Honor, to a limiting instruction at that time?

THE COURT: I will take it at this time as only offered against AMREP.

MR. FLEMING: I would request that we get an instruction at that time that it is being received only against the corporate defendants.

THE COURT: As of this time.

MR. ARKIN: Can I add one thing?

THE COURT: It may be that they can, if something comes out in the future, be told that they can consider this, but at the present time it is only coming in against the corporation.

MR. FLEMING: I would request that instruction at this time, your Honor.

THE COURT: All right.

MR. ARKIN: One further thing in respect to that which is that these reports I take it are being introduced on the theory of notice.

THE COURT: First of all, is 44 in?

MR. ARKIN: With respect to 44, if your Honor please, we have no objection to 44, but we would like to know henceforth with respect to other exhibits of the same ilk whether the government now intends to offer the entire pamphlet or book or just the pages which were previously designated as the government exhibits.

You see, this particular exhibit, 44, before we commenced the trial, only a few pages or some certain pages within that exhibit were specified as being the government exhibit.

Now they seek to introduce the entire pamphlet. We have no objection to that pamphlet. We would like to know in terms of the game rules for the balance of the trial which of those documents they now intend to introduce wholly as opposed or as contrasted to introducing only portions of those documents.

MR. KAUFMAN: Your Honor, I think in general we intend to offer the whole document. There were only very brief portions of each of these documents that we intend to read to the jury. I think --

THE COURT: Wait, wait. That is not what Mr. Arkin is saying.

MR. KAUFMAN: I understand.

THE COURT: He says that when you originally designated these to him that you were going to only offer certain pages. He says you are now offering the entire document.

He says that is a change of the understanding he had.

MR. KAUFMAN: I don't think that is entirely accurate. I think what we had said was with respect to this document these designated portions are the portions that we will be utilizing or reading to the jury or relying on, language to that effect. I don't think we specifically got down and said whether or not we were going to offer the whole document.

THE COURT: Obviously you offer the whole document that leaves it open for you to utilize the whole document, doesn't it?

MR. KAUFMAN: Yes, we have told defense counsel the parts that we would be utilizing in our --

THE COURT: Mr. Kaufman, stop playing words with me. If you offer it in evidence and it goes in, it is in entirely. That is completely different from what portions you are going to read to a jury. You are only going to put in pages 10 and 12, say so. If you are offering the whole document and it is admitted in evidence, the whole document is before the jury, any portion of it.

He says, Mr. Arkin, that when you designated the exhibits that you were going to use you designated only certain portions which were going to be offered in evidence. That is what he says.

MR. KAUFMAN: Your Honor, I don't have a clear recollection of whether or not it was said that way or in terms of just the portions that the government would be specifically referring to. I think it makes just more sense to offer the entire document --

THE COURT: He wants to know whether you have changed the game rule on him.

MR. KAUFMAN: If Mr. Arkin's initial representation is correct, then the answer is yes.

THE COURT: All right.

MR. ARKIN: My representation was correct.

One further thing, if your Honor please, with respect to this exhibit and certain other exhibits of a like type, which is that they are coming in I guess to show notice on the part of the corporations and they contain forecasts or projections or estimates of certain future happenings.

They contain really opinion, they contain hearsay. They are not and should not, I suggest to your Honor, be taken as ultimate or absolute proof of the fact, which the government seeks to establish, like a road to the northwest.

THE COURT: I assume you will cross examine this witness on that very point. I expect that sort of cross examination.

MR. ARKIN: I won't disappoint your Honor.

THE COURT: Good.

MR. ARKIN: I am concerned that the document--

the problem I have is when a jury is confronted with a document which has an official looking folder on it or an official looking cover and is passed around, that unless we have some kind of instruction to the jury --

THE COURT: It depends what portion is being passed around. I gather some of this is past material and some is future projection and I assume, if you will as I had asked this witness before, he couldn't state here and say that the projections of 1985 were accurate. We have not reached 1985 yet.

MR. ARKIN: No, we have not.

THE COURT: I think you bring that out on cross examination.

That this document, the portions that the government may want to rely on, is purely an opinion drawn by people which may or may not be true.

I am sure he will never testify it is true even for six months from now.

I will put it this way: I would be greatly surprised if any witness under oath on this stand will say this is true six months from now.

MR. ARKIN: I hope that your Honor is correct in that.

THE COURT: We will find out what he testifies to.

MR. ARKIN: There may be other witnesses to testify.

MR. FLEMING: May I raise one point, your Honor.

With regard to the admissibility against the corporation, we believe that even against the corporations the evidence can be taken only subject to connection.

We believe a corporation cannot know something in a vacuum and that unless knowledge of the particular document or the particular opinion or the particular alleged fact is connected with a person in the corporation of a sufficient capacity --

THE COURT: I think a jury can draw an inference if you have it in your files, the corporation can be found by the jury to have knowledge of it.

MR. FLEMING: We would just like to reserve --

THE COURT: I overrule the objection.

MR. FLEMING: I was not objecting to it. I was reserving the right to brief that point even if it comes in against the corporation, absent connection to a person of a sufficiently high capacity --

THE COURT: Then they will have to bring somebody down and testify where it came from. I don't care if it is a messenger boy who says he got this from the library. That is enough for the corporate purposes.

Since you are admitting that you produced it, you had it.

MR. FLEMING: My point is really you have a mens rae defense here with a corporation, however that works. If you took a hypothetical situation where the only person employed by the corporation who knew of the particular fact was a messenger boy and that was the case, I don't believe that the corporation --

THE COURT: That is not the case here, though.

MR. FLEMING: I say if it were the case, I don't believe the corporation could be found guilty of fraudulent intent or mens rae --

THE COURT: I would agree with you on that hypothetical, but that is not the case here.

MR. FLEMING: I just wanted you to agree on the hypothetical.

THE COURT: I agree on the hypothetical, but that I repeat is not the case here.

MR. WEIDNER: The connection problem is of particular importance to us --

THE COURT: I have already indicated my ruling to you. Do you disagree with my ruling?

MR. WEIDNER: That there be a limiting instruction to the jury that this is only admitted against the corporation.

THE COURT: At this time.

MR. KAUFMAN: Your Honor, I would like one clarification also.

At pretrial conferences your Honor ruled that with respect to the planning department documents that a company that is selling $100 million worth of land in Albuquerque would go to that official body and find out what projections they have made and that a company that didn't do that shouldn't be selling land. This was in line with the government's argument that a company like AMREP, selling land at Rio Rancho, has an affirmative duty to find out what is being said in the area in which they are selling land.

THE COURT: I did not go that far. I said that particular document you are referring to.

MR. KAUFMAN: That is the document we are referring to now, your Honor, so that is why I am asking for a clarification on the limiting instruction because it is the government's argument that these individual defendants --

THE COURT: At this point I will only admit it as I have indicated. I will see what develops.

MR. KAUFMAN: Okay.

One other matter, your Honor.

With respect to Mr. Carruthers --

THE COURT: Who is Mr. Carruthers? Aren't we on Mr. Pierce now?

MR. KAUFMAN: Yes, but he will be on the stand shortly and I didn't want to take your Honor's time with another recess.

MR. ARKIN: I suggest Mr. Carruthers would not be on the stand for some time.

THE COURT: I think there is going to be searching cross examination of this gentleman.

MR. KAUFMAN: I wasn't predicting time. I was trying to be cautious and not take any more of your Honor's time and taking another recess and that is why I did it now.

My other point is that when Mr. Carruthers is on the stand, I had intended to read certain statements to him from the Harmon, O'Donnell & Henninger report, which is a report AMREP commissioned in 1965 which stated certain facts about the Albuquerque area.

At the time I intend to read those portions of the report to Mr. Carruthers, the report itself will not be in evidence because the witness from Harmon, O'Donnell & Henninger by necessity will not have been on the witness stand yet.

We have a problem here with the Harmon, O'Donnell & Henninger witness and Mr. Carruthers.

THE COURT: Who is Mr. Carruthers?

MR. KAUFMAN: He is the director of the planning department. The Albuquerque planning department, your Honor.

We have a logistical problem that with respect to these two witnesses, we want to refer to documents of the other agency with respect to each witness and by necessity one witness has to go on first and obviously one has to go on second.

Mr. Carruthers is going on first and I want to refer to a Harmon, O'Donnell & Henninger document which we anticipate will be in evidence given the next witness.

THE COURT: Yes, Mr. Arkin.

MR. ARKIN: With respect to that document, certainly before it comes into evidence there is going to be at least a substantial voir dire I would expect of Mr. Avellant who will be the witness through which I believe the government is going to seek to introduce that report.

Additionally Mr. Kaufman, I am sure he may have misspoke when he said there are certain facts contained in the Harmon, [illegible]'Donnell & Henninger report.

There are certain opinions contained in that report which I believe the government will seek to rely upon, but I would object to having those opinions, which appear in that report, read to a witness and have the witness answer whether or not he agrees with those particular opinions, which I gather is what Mr. Kaufman seeks to do. I don't think that is fair.

MR. KAUFMAN: Your Honor, what I want to do is read verbiage out of that report to Mr. Carruthers and ask him if that consists of an accurate representation of the situation in Albuquerque at the time that it was written both in terms of current situation and in terms of future forecasting.

Mr. Carruthers is in a uniquely relevant position to be able to state that.

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THE COURT: I have no problems with current situations, but I am bothered by future forecasting.

What you are talking about are two experts who said taking these facts I forecast A and the other fellow says taking those facts I forecast B.

You are saying I want to use A to prove that B doesn't know what he is talking about.

MR. KAUFMAN: No, no, with respect to this, we are going to use A to say that what B said was accurate. In other words, the Harmon, O'Donnell & Henninger report is a report that put AMREP and the defendants on notice that what they were telling its customers with respect to the future growth of Albuquerque was inaccurate.

THE COURT: In other words, you are not going to disagree with the opinion as set forth in the Harmon report?

MR. KAUFMAN: With respect to the direction of growth, the Albuquerque department planning officials --

THE COURT: Are you going to ask him any questions which show that the Harmon report is inaccruate?

MR. KAUFMAN: No, your Honor.

THE COURT: That's a different face, is it not, Mr. Arkin?

MR. ARKIN: No, I think it has the same defect in presentation because what is going to be going on here is they are going to be utilizing Carruthers to buttress, you know, in advance of its admission into evidence the opinions of Harmon, O'Dornell & Henninger and it seems to me the way they can do it, the proper way, would be to ask Carruthers certain questions, I am not going to tell them how to ask the questions, but ask certain questions about the state of Albuquerque and about forecasts which were made by the Albuquerque planning commission and about forecasts which were made by other persons and then after having Mr. Avalanet then render his opinion or the opinions which he rendered back in 1965 or '66 and then if on summation or argument or whatever the government is free to say they agree with each other.

I think it is just wrong to take a piece of opinion, which is not in evidence, an opinion from a document not in evidence, and read it --

THE COURT: Are you objecting to the introduction of that report?

MR. ARKIN: Well, your Honor, we objected to it at pretrial and were overruled so as I understand it, your Honor will admit it into evidence.

THE COURT: That's right.

MR. ARKIN: If it's going to come in, yes, but

I think the way in which they seek to utilize it is not right.

THE COURT: Overruled.

MR. FLEMING: Judge, may I speak to that? I heard the government say before trial that they were not going to call any expert witnesses. If I heard that wrong, I will retract what I am going to say, but going forward on that assumption that they were not going to call an expert witnesss, to say to one witness do you agree with the forecast or opinion expressed in document A is to turn that man into an opinion witness.

THE COURT: Mr. Kaufman.

MR. KAUFMAN: Your Honor, I think given the witness' job, the testimony that we will hear from him, he will be testifying factually.

THE COURT: He can't testify factually as to an opinion of what is going to happen in the future, can he? That is his expert opinion. That is not a factual statement.

MR. KAUFMAN: Your Honor, we are in a situation here where, as your Honor pointed out a few days ago, the crux of this case is an opinion, if we term it that, that Rio Rancho and AMREP told to the thousands and thousands of people who bought the land.

THE COURT: You are getting away from the point. Mr. Fleming's point is a technical one.

Are you offering this man as an expert or aren't you?

If you are going to ask him for his projections, that makes him an expert, not a fact witness.

MR. KAUFMAN: At the pretrial conference we informed the court that we had a long discussion about a semantics problem, but the bottom line was your Honor said we could not call him as an expert --

THE COURT: That means you can't ask him questions that you could put to an expert.

MR. KAUFMAN: I understand.

THE COURT: Mr. Fleming says that's exactly what you are going to do here contrary to my indication of a moment or so ago.

MR. KAUFMAN: No, I wouldn't be asking the witness any hypothetical. I will be asking him about a statement in a document which will be in evidence.

THE COURT: Which will be an opinion and you are going to ask him to give his opinion based on facts which he has colated. That's the fundamental definition of an expert.

MR. KAUFMAN: Your Honor, I will be asking him whether or not --

THE COURT: He agrees with the statement.

MR. KAUFMAN: The statement that appears in there --

THE COURT: That's right and he is giving you that opinion as an expert and not as a fact.

MR. KAUFMAN: Your Honor, I think he is giving it as a fact witness who is in the business of observing --

THE COURT: I thought I made myself abundantly clear last October on this. Abundantly clear and you saw fit to proceed without notifying the defendants you were calling an expert.

MR. KAUFMAN: In October we were told that we couldn't change our minds. At that pretrial conference we had a long discussion about the semantics problem that had I been involved --

THE COURT: I don't think it was semantics. I think it is fundamental law that you should have learned in evidence at law school.

MR. KAUFMAN: At the congress in October I said to your Honor, if we reach that type of an impass, at this point the government says we will be calling these individuals as experts and your Honor ruled that we couldn't do it.

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THE COURT: That's right because you are ready to go to trial the next week.

MR. KAUFMAN: That is obviously why in October, it has been two months now, and the government wanted at that point in October to give that notice and your Honor said we couldn't, but these defendants have had many conversations with these witnesses, I am sure they know as much about them as we do, and I don't think the practical import of notification has any significance here because the defendants I am sure have done the investigation into these witnesses whether or not they be classified as experts.

THE COURT: I would conduct an entirely different investigation of a witness who is classified as an expert than if he weren't.

MR. FLEMING: They have had this case for three years and they made a representation that they were not going to call any expert witnesses. Now they come in and they say that if someone says I agree with that opinion he is not an expert witness. That is just nonsense.

THE COURT: I agree with that. That is not a factual statement. That is an opinion statement.

All right, bring in the jury and Mr. Pierce.

(Jury present.)

A L B E R T P I E R C E, resumed.

THE COURT: You may proceed.

XXX (Government's Exhibit 44 received in evidence.)

MR. DEVORKIN: May I read from a small portion of this exhibit at this time, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 44 in evidence to the jury.)

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q What document is that, Mr. Pierce?

A I am sorry, sir. Could you read that again, please?

Q The document entitled economic population and housing characteristics, Albuquerque area, 1960 to 2000.

A Is there a footnote reference on that? I believe that was one done by Kerschner & Associates, but that is speculation right at this time.

Q Let me show you page 9. Do you recall which document that is?

A I believe that is the document that was prepared for us by the firm of Kerschner & Associates.

(Mr. Devorkin continued reading from Government's Exhibit 44 in evidence to the jury.)

Q Mr. Pierce, there is a reference in here to the adopted transportation plan. What transportation plan is that?

A Formally called the major street and highway plan. It was done in the 1964 time period by the firm of Wilbur Smith & Associates formally adopted by the local elected officials in the '64/'65 time period.

Q Was that based on the 1985 land use plan you identified this morning?

A Yes, sir.

Q Would you explain to the jury -- withdrawn.

Is there any difference between population forecasts as used in transportation planning and used in any other kind of planning?

A Essentially, no, the traditional pattern is to formulate a high, medium and low range of potential populations in future years.

Q When you are making transportation plans, which of those ranges do you generally use, if any?

A Frequently for public systems, transportation or water, sewer, this type of thing, we tend to use the high range because it infers a number of things about capacity or needed capacity or possibly needed capacity, which is the basis for some of the preliminary redesign work.

Q Would you give us an example and explain what you mean by using that example?

A Well, for example, when the long range plans define a corridor of need for transportation facilities, we might acquire the right of way within that corridor, again an example, a six-lane facility, but strategic development of it we might develop only four of those six lanes reserving the center for future expansion.

The reason for that is it is the most cost effective way to proceed and it avoids going back and having to acquire additional right of way at great cost later on.

Q If you are building a highway through an area, for example, you plan for the upper most reasonable capacity to be cost effective in the investment in that facility?

A In general that is true, yes, sir.

MR. ARKIN: I object as an opinion.

THE COURT: Overruled. You let the document in.

Q Was there a time before -- withdrawn.

During the 1960's and early 1970's there were various population projections for Albuquerque, correct?

A Yes, sir.

Q Those were done by groups such as yours and the University of New Mexico, Bureau of Business and Economic Research, correct?

A Yes, sir.

(Continued on next page.)

Q Was there a time in the late 1960's or early 1970's when those projections were revised?

A Yes, sir.

Q In which direction were the projections revised?

A They were revised downward in the '68, '69, '70 time period.

Q What was the reason for revising your projections downward at that time?

A We were not only participating in the general recession of the period, but we had a reduction in some of our primary employment areas, primary export income generators, principally in activities associated with atomic energy, the Atomic Energy Commission, the Siandia Corporation and some peripheral activities.

That was one of the primary reasons, and that had a secondary impact on the economy in terms of other kinds of construction operations.

Q The area referred to in the section that I read from, page 9, is what area of Albuquerque or the region, do you know?

A For that document it is the urban area.

Q Which includes what?

A The Albuquerque urgan area as we have definied it is the city of Albuquerque and those areas adjacent to the municipal limits within the developed portion of Bernalillo County.

THE COURT: I am sorry, I don't understand that. It's the city of Albuquerque plus what?

THE WITNESS: Plus the areas outside of the city limits within Bernalillo County. Albuquerque is in the center of Bernalillo County.

THE COURT: All right.

Q On page 11, paragraph number 2 at the top of Government Exhibit 44, it reads spacial distributions of future vacant land development will reflect the general form of the adopted 1985 land use plan and the current zoning designations.

What does that paragraph mean, Mr. Pierce?

MR. ARISOHN: Objection.

THE COURT: I suppose it means what it says.

Q When you use the words spacial distribution of future vacant land development, what are you referring to?

A Spacial distribution refers to the distribution throughout the area identified by small subareas. It's just the distribution of future year activities, where they are intended to or likely to grow.

Q Paragraph 4 at the bottom of page 11 reads the majority of development will continue to occur in the northeast quadrant of the area until capacity is approved and development on the west mesa will increase most significantly after 1980.

Q Where is the west mesa specifically located?

A By the definitions used in that document, it is the area west of the Rio Grande, between the river and the volcanic escarpment.

MR. DEVORKIN: May I use one of the mosaics to show the jury where the escarpment is?

THE COURT: Just ask him whether that includes Rio Rancho.

Q Does that include Rio Rancho?

A It includes the entire area from essentially the mid portion I40 northward and would include the Rio Rancho portionof APJ, yes.

Q The escarpment is below Rio Rancho, isn't it?

A The escarpment is below Rio Rancho.

Q So when you refer to the west mesa, where are you referring to?

MR. FLEMING: Objection.

THE COURT: He said the west mesa includes Rio Rancho. That was the question put to him and that's the answer he gave.

Q Could you tell us what the reference to the capacity of the northeast quadrent of the area is?

MR. FLEMING: Objection.

MR. ARISOHN: Objection.

THE COURT: What the capacity of the quadrant is?

MR. DEVORKIN: Yes.

THE COURT: In what sense?

MR. DEVORKIN: Let's take first of all approximately how many acres of land, developable land were you talking about in the northeast quadrant when you referred to the capacity in this document?

MR. ARISOHN: Objection, your Honor. There is no evidence that he was referring to anything. It's a document by an organization.

THE COURT: I will take his statement if he knows.

Do you know how many acres were in the northeast quadrent?

THE WITNESS: No, sir. I can only give an estimate at this point.

THE COURT: An estimate.

THE WITNESS: Referring to the area known as the Elena Gallegos grant.

THE COURT: Could you give us the outlines of that?

THE WITNESS: Yes, sir. It extends from just north, about a quarter of a mile north of Montgomery Boulevard, which is the city limits at that time, northward to the Siandia Indian reservation. The northern part of that area is another area called Albuquerque Acres.

THE COURT: Is Montgomery the same as Central Avenue because somebody defined the northeast as everything east of the Santa Fe railroad tracks and north of Central Avenue.

THE WITNESS: That's correct, sir. Montgomery --

THE COURT: Do you adopt that definition?

THE WITNESS: Not if I understand your question correctly, sir.

THE COURT: Somebody on the stand here the other day described the northeast area. When you say northeast area, we have got to assume that every time somebody used the term northeast area they are talking about the same thing. The definition was everything east of the Santa Fe railroad track and north of Central Avenue is known as the northeast area.

THE WITNESS: That's correct, sir, but that is not the area I was referring to in relation to this document.

THE COURT: If we are going to have 17 definitions of northeast area nobody is going to understand what's going on here.

MR. DEVORKIN: May I use one of the mosaics, your Honor?

THE COURT: He is talking first. I want definitions because the jury has to understand this. We now have a second definition for northeast area.

MR. DEVORKIN: I think it would be helpful if Mr. Pierce showed on the mosaic what he is talking about.

THE COURT: First we had a definition and now he is saying he is not talking about the definition. Do we ignore the definition given to us the other day and start with a new one?

MR. DEVORKIN: No, we don't.

THE COURT: Then tell us what it is.

THE WITNESS: The northeast quadrant of the city of Albuquerque within the municipal limits as you have described it,your Honor, from Central Avenue and the railroad tracks, all that portion. The northeast section of the area that we were discussing lies, or laid outside of the municipal limits at that time.

THE COURT: I don't understand that, but the same quadrant going out?

THE WITNESS: Within the same quadrant. It's the extreme northeast section of that quadrent, but out --

THE COURT: Beyond the city limits?

THE WITNESS: Beyond the city limits, yes, sir.

THE COURT: You made a statement before that I didn't quite understand. Have the city limits changed from time to time?

THE WITNESS: Yes. They frequently change.

THE COURT: By what, through the legislature giving more land to the city?

THE WITNESS: No, sir. This is annexation which is allowed under state law and provided for in the municipal ordinances.

THE COURT: In other words, the city of Albuquerque has the power under the New Mexican state law to say they will annex property beyond what it now has?

THE WITNESS: Yes, sir.

THE COURT: They can do that?

THE WITNESS: Yes, sir.

THE COURT: Do you need the consent of the people who live in it?

THE WITNESS: There are two formal actions that can be taken. One based on petition of the majority of property owners in the area to be annexed or the initiative could lie with the municipality under state law, in which case they would go to formal public hearing and achieve the permission of the citizens.

THE COURT: All right.

Q Exclusive of north Albuquerque Acres, can you estimate the acreage capacity in the northeast --

THE COURT: Exclude what?

Q Exclusive of north Albuquerque Acres, which is in the northeast quadrant, correct, Mr. Pierce?

A Yes, sir.

Q Exclusive of that property, can you estimate the acreage that you are referring to in Government Exhibit 44 as being in the northeast quadrant?

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. FLEMING: Are we talking about developable land, because I think that would be the only relevant inquiry.

THE COURT: I assumed that. You don't mean mountains, do you?

MR. DEVORKIN: No. I mean exactly the land he is talking about here as developable, which is what this says.

THE COURT. Okay.

Q Can you just roughly estimate the amount of acreage exclusive of north Albuquerque Acres?

A If we are speaking of the area identified as the Elena Gallegos grant, excluding Albuquerque Acres, which is a subdivided area in the northern portion of that, that leaves an area which was Simms property, a ranch which extended from the river to the mountains, which I would estimate approximately two miles in width north and south. The developable land we are talking about probably is around five miles.

In other words, an area two by five miles, which would be about 6,000 acres, over 6,000 acres.

Q Based upon the existing densities of population in Albuquerque at the time this report was published, can you estimate the capacity for single-family dwellings in that roughly 6,000 acres?

MR. ARKIN: Objection. It calls for an opinion.

THE COURT: What do you mean by single-family dwellings? On acre lots, three acre lots?

MR. DEVORKIN: Using the densities for single-family lots that pervailed in Albuquerque at the time of that report.

What were the densities for single-family dwellings, if you know, at the time of that report?

MR. FLEMING: I object on the basis the question should be density in this area of development.

THE COURT: In the northeast.

MR. FLEMING: In the upper northeast which is the 6,000 acres he is talking about.

THE COURT: I don't understand that objection.

MR. FLEMING: Right in the middle of Albuquerque they might have a density of three families per foot, but the relevant question would be what would be the density for the 6,000 acres he is talking about up in the extreme northeast quadrant, as I understood his testimony.

THE COURT: Let him give an opinion of what he thinks it should be and you can cross examine him on it.

MR. FLEMING: Okay.

Q What were the densities in the developed sections of the northeast part of Albuquerque at the time this report was published, if you know?

A I would estimate the average might be from five to seven single-family dwelling units per acre in the average type of subdivision.

Q So that it would be 30 to 42,000 lots for such single-family homes at that density in this 6,000 acres you are talking about, correct?

A Well, if it were an average of six, 6,000 acres, we would be looking at 36,000 parcels. Of course excluding from that, or a possible exclusion from that, the right of way for streets, which might lower it slightly.

Q If you are using quarter acre parcels of land, it would be approximately 24,000 dwelling units, correct?

A Yes, sir.

(Continued on next page.)

Q What was the average person per single family dwelling unit figure for that section of Albuquerque at that time?

A In the 1970 census, which is the latest factual relationship we have, it indicates that approximately 3.6 persons per household were in the municipal limits in single family dwelling units.

Q Let me show you Government Exhibit 56 for identification. I ask you to look at it and tell us whether you recognize it.

A Yes, sir.

Q What is it?

A This is a surveillance document which we prepare periodically, usually on an annual basis. It is entitled socioeconomic indicators 1974 estimates.

It contains estimates by small area which we call data analysis zones. These may approximate a quarter of a square mile. The whole area is divided in these small areas to make these estimates.

It contains estimates of the total population, the density of population, school enrollment, employed persons, total housing, housing by type, single family, multi-family, mobile homes, estimates of auto ownership and total employment in each one of those areas.

Q This was prepared by our organization?

A Yes, sir.

Q By your staff under your supervision?

A Yes, sir.

Q Using the data that you have described previously this morning?

A Yes, sir.

MR. DEVORKIN: I offer Government Exhibit 58.

MR. ARISOHN: We have no objection.

(Government Exhibit 58 received in evidence)

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MR. DEVORKIN: May I read from portions, your Honor?

THE COURT: Yes.

MR. DEVORKIN: I am reading from a portion of the table called Table 1 on page 3 entitled population change 1970, 1973, 1974.

For the city of Albuquerque the figures are as follows:

In 1960, 256,000. In 1973, 303,000. In 1974, 311,000, rounding off to the nearest thousand.

The percentage change from 1970 to 1974, 21 percent. The percentage change from 1973 to 1974, 3 percent.

The greater Albuquerque area -- what does that include, Mr. Pierce?

A The urban area as previously defined within Bernalillo County and one exception to the north of Bernalillo County, the community of Corrales.

Q That doesn't include Rio Rancho?

A I would have to refer back to the document to see if we specifically identified the zone.

Q Let me refer --

A We maintain those estimates separately at times.

Q Let me refer you to the footnote on page 4.

A All right, these are confined to the previously defined urban area for transportation planning purposes and they do not include Corrales and Rio Rancho.

Q The figures for the greater Albuquerque area show 1970, 310,000; 1973, 367,000; 1974, 370,000. The percentage change from 1970 to 1974 is 19 percent. The percentage change for 1973 to 1974 is 1 percent.

Page 4, under population, the first paragraph reads,

Although the population in teh GAA, which is the Greater Albuquerque Area?

A Yes.

Q Has increased significantly between 1970 and

1974 by 19 percent, the increase slowed dramatically in 1974 to only 1 percent.

See Table 2.

While the 19 percent is almost double that of the states four year growth rate of 10 percent, the last year greater Albuquerque increase is half of the two percent increase in the state population.

Page 12 under Table 3 give the acreage of the city of Albuquerque for the year 1970, 1973, '74.

In 1972 it was 51,603. In 1973, it was 54,635. In 1974 it was 55,648.

Under population it reached, the population within the Albuquerque city limits increased at a much lower rate, 3 percent, during 1974 than it did during the 1970 to 1974 period (21 percent).

Percentage-wise it seems that the city's population is growing at a faster rate than the greater Albuquerque area. Part of this could be attributed to the fact that the city limits have expanded.

Now, on page 13 there is a table entitled Comparisons Of the City of Albuquerque Socioeconomic Characteristics and under housing it lists single family.

What does that refer to, Mr. Pierce?

A Any single unit designed and usually

occupied by one family.

Q The figure in 1970 was approximately 63,000, rounding to the nearest thousand. The figure in 1973 was 73,000. The figure in '74 was 74,000.

The percentage change from '70 to '74 was 18 percent and the percentage change from '73 to '74 was 1 percent.

Multi-family. What does that refer to, Mr. Pierce?

A Any residential unit which is designed for and usually occupied by more than one family.

Q This is the figure for the number of multi family units in various buildings?

A The number of dwelling units in total.

Q The figure for 1970 is approximately 17,000; 1973, 30,000; 1974, 31,000. The percentage change from 1970 to'74 is 83 percent.

Percentage change from 1973 to '74 is 4 percent.

Showing you Government Exhibit 59 for identification, Mr. Pierce, would you look at it and tell us whether you recognize it.

A Yes, sir.

Q What is it?

A It is a document we produced called a factual digest of Bernalillo, Sandoval, Torrence and Valencia Counties of New Mexico, which again is state planning and development District 3.

Q Just briefly what kind of information is included in that document?

A This document is produced as part of our comprehensive planning and development program. It displays information which would be of very general interest and also of specific interest to anyone interested in the development or perhaps even locating a development in this part of New Mexico.

Q What kind of information is in there?

A It covers a broad range of socioeconomic data, physical data, such as the natural resources, the availability of utilities, tax bases, anything which would be of primary interest, again, to the average industrial developer who wants to make comparisons with other parts of the country.

Q This was prepared by your staff?

A Yes, sir.

Q Under your supervision?

A Yes, sir.

Q Using the same data that you have outlined before?

A Yes, sir. Supplemented where necessary by other kinds of data from the local governments or the state government.

MR. DEVORKIN: I offer 59.

MR. LAVINSKY: What is the date of that?

MR. DEVORKIN: It is dated November 1974.

MR. ARISOHN: We object. It is irrelevant and it is hearsay.

THE COURT: Let's see it.

(Pause)

THE COURT: I will let it in.

(Government Exhibit 59 received in evidence)

MR. DEVORKIN: Reading from page VIII-I. Listed at the bottom Bernalillo County, population in percentage change. The sources listed as the Bureau of Business and Economic Research University of New Mexico. Population 1950, 146,000, approximately. 1960, 262,000. Percentage change 80 percent.

1970, 316,000, percentage change, 20.4 percent.

1973, 351,800, percentage change, 11.4.

Reading from Page VIII-IX. The second paragraph in the left-hand column.

Between 1970 and 1972 there was a sharp increase in the number of new homes built and a slight increase in the average valuation to $25,600 per finished unit.

Although there has been considerable building activity particularly in apartment complexes in growth and mobile home category, approximately 26.1 percent of the land within the city limits is still available for development.

MR. FLEMING: May we find out what city limits we are talking about now?

MR. DEVORKIN: I am going to do that right now, Mr. Fleming.

THE COURT: Yes.

Q Seciton 8 applies to Albuquerque and Bernalillo County, is that correct, Mr. Pierce?

A That's correct.

Q The pages I just read from are within that section, is that correct?

A That's correct.

Q There are other sections for Sandoval County and other counties, correct?

A Yes, sir.

Q Does this refer, the part that I just read on page 9 of that section, to Albuquerque's city limits as of the date of this publication?

A That is correct.

Q You referred before I believe, to the Elena Gallegos grant. I believe you described where it was, is that correct?

A It is an original Spanish land grant which runs predominantly east and west from the Rio Grande to the mountains in the northeastern section of the urban area.

Q I am a little confused. You said it runs east and west from the river --

A Predominantly east and west. It is rectangular. Predominantly east and west from the Rio Grande to the mountains.

Q So it is east of the Rio Grande River?

A Yes, sir.

Q There was a time period when there were legal disputes over that grant?

A Not that I am personally aware of. Those titles have been cleared or were transferred many years ago to the best of my knowledge.

Q That was my next question.

Do you recall or do you know when those titles to that grant were cleared and the area was available for development?

A No, sir.

Q Can you tell us when that happened or when that would have been before?

A My earliest recollection would be -- or knowledge would be based on the Albuquerque acres that has been referred to which was merely a contemplated subdivision which was accomplished in the 1920's.

Q That was part of the grant at one time?

A That was the northern part of the grant, yes.

Q And that was sold off in the 1920's?

A Yes, sir.

Q As long as you have been in Albuquerque there haven't been any grant title problems to that grant?

A Not in that area.

MR. FLEMING: What area are we talking about?

THE COURT: The northeast. I gather we are still in the northeast quadrant.

MR. FLEMING: We are still in the northeast--

THE WITNESS: Yes.

THE COURT: Yes, he says. The northeast quadrant.

MR. FLEMING: Was he talking about an area of this grant or was he talking about the northeast?

THE COURT: This place is in the northeast quadrant.

MR. FLEMING: All right, I will wait.

THE COURT: What is your next point?

MR. FLEMING: My point was he said in that area. I want to know whether he is referring to the Albuquerque Acres area or whether he was referring to the entire grant.

THE COURT: I gathered he meant the entire grant.

Is that what you mean?

THE WITNESS: Yes, sir.

MR. FLEMING: Okay.

Q Are you familiar with a grant called the Atrisco Grant?

A Yes.

Q Just generally speaking, where is the Atrisco Grant?

A To the west of the river. It lies in the central portion of the urban area, extending from the Rio Grande westward. Again in a rectangular shape.

d t

Q Approximately where would its northern border be?

A Approximately midway between Central Avenue I-40 area and the Bernalillo County. Originally there were three grants, if this will help, there were originally three grants to the west of the river, Spanish land grants which extended from the Isleta Reservation or the southern boundary of Bernalillo County, Barijito Grant, the mid portion was the Atrisco and in the northern portion the Alameda.

Q Did the Alameda land grant include what is now Rio Rancho, if you know?

A I do not know.

Q Would you use this pointer, Mr. Pierce, and on Government's Exh-bit 1074-A would you point out to everybody just generally speaking where boundaries of the Atrisco grant are?

A As point of reference, this is Interstate 40 shown with a black line here, Central Avenue in this area, so the boundary of the Atrisco land grant would be approximately in this area south of Central.

The next one is a little tougher.

THE COURT: You can step in front of it if you would be more comfortable.

THE WITNESS: That is all right, sir, I can see it here.

A The northern boundary would be approximately at this point, so that we are covering an area, as I indicated earlier, about the central portion of Bernalillo County, extending from the river westward.

Q What looks like a dark wavy line, is that the escarpment?

A Yes.

Q The top?

A This is the mesa area up here anywhere from six, 700 feet above the lower west mesa area.

Q The top if the Atrisco grant is at about the top of thepoint of the escarpment is that a fair estimation just for the record?

A You mean the northern portion?

Q Yes.

A Well, the escarpment extends all the way north to Paradise Hills.

Q From the record it is about three inches below Paradise Hills and Paradise Hills is this area here with the golf course on ti.

A Yes, sir.

Q There was a time when there were legal disputes over the title to the Atrisco land grant or portions of the Atrisco land grant?

A Yes, sir.

Q Did there come a time when those legal disputes ended?

A They were resolved.

Q When was that and how was the resolution worked out?

A About in the 1968 time period or even prior to then there was considerable interest on the part of the land owners because of the titel problems in the recorded records of transferring and subdividing the land down through the generations so all of the land owners moved together through the courts and having traced their genealogy and making sure that they had all the heirs identified, they then exchanged their right and title to those individual properties for shares in the Westland Development Company, Inc.

Q Now, is title to what is known as the Atrisco land grant now held by the Westland Development Corporation?

A Yes, sir.

Q When did that process of turning the individual titles into shares in Westland come to a conclusion?

A About the 1972 time period.

Q It began at what time?

A About 1968, in that four year span they were able to quiet title.

Q Is Westland Development Corporation developing that area formerly known as the Atrisco land grant?

A Yes.

Q What kind of development is going in there now?

A So far the developments have involved an industrial park, which is close to I-40 and Coors Road, which is near the Rio Grande.

Some other developments, some limited residential developments have started and they are laying plans for other portions of the area.

Q What are the major interstate accesses into Albuquerque?

A Interstate 40 extends through the southern portion of the Atrisco land grant as it is called. There are two potential interchanges --

Q Let's just talk about the interstate as it now exists.

A There is an existing interchange at Coors Road and I-40.

Q So I-40 runs through Westland's property?

A That is correct.

Q They have access to I-40?

A Yes, sir.

Q Since you have been working with council of governments, where has the majority of growth in the Albuquerque area occurred?

MR. ARKIN: Objection.

THE COURT: Overruled.

A Wel`, during that time period the trends have indicated that it would be in the Northeast Heights and, more specifically, the northern portion of the Northeast Heights area.

Q Based upon the analysis of past data by the council of governments, for how long a period of time has Albuquerque's growth been to the northeast?

MR. ARKIN: Objection.

THE COURT: Overruled.

A The main impetus started in the fifties with the creation of the Sandovia Corporation, which was an operating company for the Atomic Energy Commission, and that was located east of Kirkland Air Force Base so that the growth was really stimulated by those activities, both military and other federal activities.

The housing developed northward from the Southeast Heights area.

Q Is it fair to say that since the 1950's the growth of Albuquerque has been to the northeast?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Let me come back to my original question then, Mr. Pierce.

In view of the developments you just described in the area east of Kirkland Air Force base, for how long a period of time has the growth of Albuquerque been to the northeast?

A As previously described the impetus started in 1950 and that was the area closest to the place of employment for people at the Sandovia Corporation and other military conplexes.

Q Has it been since 1950 that the growth of Albuquerque has been to the northeast?

A Well, if we go clear back to the 1920's, the growth was eastward along Central Avenue toward the mountains.

Q You have mentioned in response I believe to Judge Metzner's question that the city limits of Albuquerque have expanded from time to time. As far as you recall, at any given time wherever the city limits were at that particular time, was there always developable vacant land within the city limits?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I suppose that would have to be a positive answer that there has been some developable land within the city limits at any time.

MR. ARKIN: May I have that answer read back, your Honor?

(Record read)

Q Are you familiar with a shopping center on Coors Road just below Rio Rancho Estates?

A Yes, sir.

Q When was that shopping center built?

A I suppose it has been under development for a year and a half. It was opened formally perhaps nine or ten months ago approximately.

Q About how far is that from the entrance to Rio Rancho?

A I would say two to three miles.

Q Are there other shopping centers like that shopping center in the Albuquerque area?

A We have many shopping centers in the Albuquerque area.

Q Are there other shopping centers like that one in the northeast section of Albuquerque?

A Similar to that as well as dissimilar, but still shopping centers throughout the area.

Q How many shopping centers in the northeast area are there that are as large or larger than that shopping on Coors?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. DEVORKIN: May I just have a moment, your

Honor?

(Pause.)

Q Are you familiar with Winrock Shopping Center?

A Yes, sir.

MR. ARKIN: I didn't hear that.

THE COURT: Are you familiar with Winrock Shopping Center?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. DEVORKIN: Your Honor, may we have a side bar on this?

THE COURT: If you want to.

Maybe we will declare a recess.

(Jury left the courtroom.)

(At the side bar.)

MR. DEVORKIN: Your Honor, two things. First of all, the Winrock Shopping Center is described repeatedly in AMREP's scripts used to sell Rio Rancho land. I want to ask Mr. Pierce, somebody who is familiar with the area, what Winrock is, where it is, how large it is.

Second of all, Mr. Arkin and Mr. Fleming repeatedly in cross examining government's witnesses tried to show how there has been a great deal of growth in the northwest very close to Rio Rancho Estates. I want to ask Mr.

Pierce, and using Mr. Arkin's own examples of that growth to try to show the jury what those examples are.

For every one of the examples Mr. Arkin has used in the northwest, there are manybe 50 examples in a different part of Albuquerque that Mr. Pierce is qualified to compare --

THE COURT: That witness couldn't give you 50 examples in the northeast.

The only point it was offered for is to show that there is activity there.

MR. DEVORKIN: I know, your Honor, but the government --

THE COURT: Wait a second The fact that you are building shopping centers some place else doesn't mean that there isn't activity here.

MR. DEVORKIN: Of course not.

THE COURT: So I sustained the objection.

Now, what about Winrock?

MR. DEVORKIN: May the government be heard on the first point?

THE COURT: I ruled on it. You said it once. You never learn. You talk, you make your record, there's a ruling, go on. We don't have a give and take here for an hour. We don't have time.

Now I assume when you make a statement you have completed it and not to hold something back to come back and argue with me after I have ruled.

Now what about Winrock I asked you?

MR. DEVORKIN: They have repeatedly used Winrock as an example of development suggesting to purchasers that Rio Rancho purchasers are going to cash in on this great development in Albuquerque. I want to ask Mr. Pierce what he knows about Winrock, where it is, what its size is, where it is in relation to Rio Rancho Estates.

THE COURT: Where is Winrock?

MR. ARKIN: Winrock is in the northeast section of Albuquerque, your Honor. On the other hand, Mr. Devorkin seems to have hyperbolized what Winrock meant in any advertising if used by the company. Nobody said that people who bought home sites at Rio Rancho were going to cash in because of Winrock.

Winrock is a fact of life and in Albuquerque in the northeast section. It is a shopping center, they have restaurants, they have a motel or hotel, they have cars, it is one shopping center in the northeast part of Albuquerque. Ie is a very handsome one. I don't see why we have to have that introduced.

THE COURT: What did you use it for?

MR. ARKIN: I never used it in my questioning.

THE COURT: What did you use it in your advertising for?

MR. ARKIN: Probably to show overall Albuquerque just like we showed Old Town, the part with the churches and the art shops, it was part of Albuquerque. That is what it was used for. It was much like a travelogue, if you will.

You have seen the pictures, your Honor, and the witnesses, the 16 we have had so far or 18 who have seen the pictures have all testified that a portin of what they were shown was what is taking place in Albuquerque or what has taken place in Albuquerque and I really can't believe that anybody could assume that showing Winrock was part of a sales presentation in the sense that people were told that Winrock was part of Rio Rancho. There is nothing like that in the advertising.

Nobody has ever said in any advertising put out by this company or these people that Winrock was part of Rio Rancho, was on the west mesa or was on the same side of the Rio Grande, was developed by AMREP or by anybody else or Rio Rancho.

It seems to me that it was nothing more than merely showing the tramway or showing the Old Town or showing Coors Boulevard or showing Montgomery Boulevard or what have you.

THE COURT: Do you have the script there?

MR. KAUFMAN: This is a script from the dinner presentation that is in evidence and I will read what they said about Winrock.

As I just pointed out to you, this university is not just a fine learning institution, but from the point of doing business a very shrewd one. You see, ladies and gentlemen, this university had the foresight about 12 years ago to purchase a tract of land just several miles from the entrance of Rio Rancho Estates. Now they purchased this tract of land as an investment at the time at a cost of less than $10,000. On this parcel of land today stands one of the most beautiful, magnificent shopping centers that you would ever feast your eyes upon.

Now, this shopping center has a very interesting name. It is named Winrock. Winrock Shopping Center derives its name from the past governor of Arkansas.

THE COURT: It's tied in by miles. I will let him ask him where it is.

(Recess.)

(Continued on next page.)

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

BY MR. DEVORKIN:

Q Mr. Pierce, are you familiar with the Winrock Shopping Center?

A Yes, sir.

Q What is it?

A It's a shopping complex.

Q Is it fair to say it's the largest shopping complex in Albuquerque?

A No, sir.

Q Which is bigger?

A Corronado.

Q How far apart are they?

A Less than a quarter of a mile.

Q Are you familiar with where it is in Albuquerque?

A Yes, sir.

Q Would you come down off the witness stand and on Government Exhibit 1075 in evidence take this red pencil --

THE COURT: You don't need that. Just point to it, please. All he wants to tell the jury is it is in the northeast section and then we will go on to something else.

Q Will you point out where it is?

A Here is Interstate 40 through the area. Winrock

Center is right at this point at the intersection of I40 and Louisiana. Just north of that is the Corronado Shopping Center and this photo is about 50 per cent developed at this point in this photo.

Q How far is that from Rio Rancho?

A I would estimate about 13 miles if the minimum time package were traversed across I40 across to Coors Road, tnen northward along Coors Road to the intersection of 528 and Coors Road in this area. There are minimum distances packages a little shorter than that through the developed area here and across and up through the north valley or an alternative to that would be to proceed around from an interchange at the north here across through the valley southward to the Corrales crossing.

Q The shopping center that we were referring to before on Coors is located where on that photograph?

A The intersectionof 528 and Coors Road are at this point.

Q How does the Winrock Shopping Center compare to that shopping center?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. DEVORKIN: No further questions.

THE COURT: You may cross examine.

Do you want that photograph up?

MR. ARISOHN: Certainly.

XXX CROSS EXAMINATION

BY MR. ARISOHN:

Q Mr. Pierce, you testified that the council of governments, COG, we will call it COG, includes all the local governments within the Rio Grande area?

A Yes.

Q And it also includes special purpose units?

A Yes.

Q Such as the flood control authority?

A Yes, sir.

Q And the public school system?

A Public schools.

Q And the utility companies?

A They are associate members. The public service company is an associate member.

Q Such as Rio Rancho? Is that correct?

A Yes, sir.

Q I take it that Rio Rancho recent membership in the last couple of years reflects a recognition by your organization that Rio Rancho and its population are a viable entity and having a significant impact on the Albuquerque region, isn't that so?

A Yes, sir.

Q And on its future development?

A Yes, sir.

Q I take it that admission to COG is not automatic?

A It's a voluntary association of local governments.

Q Must not applications for membership be approved by your board of directors?

A Yes, sir.

Q And in this case the application by Rio Rancho was approved by the board of directors, is that not so?

A Yes, sir.

Q Which is made up of representatives from various government units around the middle Rio Grande area?

A Yes, sir.

Q Such as the mayors of the various little cities and the mayor of Albuquerque and so forth?

A Yes, sir.

Q I take it that COG views Rio Rancho as a total community?

A Yes, sir.

Q One which has an industrial base with its own employment opportunities?

A Yes, sir.

Q And provides commercial services and a place for people to live?

A Yes, sir.

Q Do you consider Rio Rancho a successful new community?

A Yes, sir, in its physical development.

Q Is there any special definition for a new community of which you are aware?

A In terms -- perhaps one definition I could offer would be the federal definition through the Department of Housing and Urban Development where --

Q That's HUD new communities?

A Yes, sir, HUD New Communities Act. The objective was the development of new viable communities to offset some of the urban problems that we have in certain areas of the United States.

Q Are you familiar with the HUD new communities?

A Vaguely, yes, sir.

Q Would your organization based upon its criteria consider the HUD new communities to be successful new communities?

MR. DEVORKIN: I object.

THE COURT: I don't understand the question.

Q Based on your organization's knowledge of other new communities, of HUD new communities throughout this nation, based on your criteria, would you consider the HUD new communities, the government-sponsored new communities to be successful ones?

MR. DEVORKIN: I object.

THE COURT: I don't know what's meant by a HUD new community. Ask the witness to define it.

MR. ARKIN: I probably did.

THE COURT: No, you asked him if he was familiar with it and he said yes, but neither the jury nor the court knows what he is talking about.

Q Would you define a HUD new community?

A A section of the Housing and Urban Development Act administered by the Department of Housing and Urban Development did provide for federal assistance with the development of new communities. This was a program which was instituted several years ago. I am not personally aware of the degree of success nor failure of such programs. I can only say that it was instituted and there were resources allocated to the program.

Q Your organization is concerned with the planning and future population growth within your particular region, aren't you?

A Yes, sir.

Q You engage in data collection for this purpose?

A Yes, sir.

Q And also as part of your data collection traffic information, flow of traffic information?

A Yes, sir.

(Continued on next page.)

Q And establishment of commercial and industrial establishments in particular areas go into your data collection base?

A Yes, sir.

Q I take it also as part of your function, that is observing the growth of the region you also observe the growth of Rio Rancho?

A That's correct.

Q And Rio Rancho is within the APJ1, is that not the area of jurisdiction 1, is it not?

A Yes.

Q Which you testified was a subdistrict within a district which has a potential for urban development, is that not so?

A Yes, sir. The definition I used was that that area is identified as the area in which urbanization will be taking place within the next twenty years.

Q That is which has a high potential for urban development, is that not true?

A It has a high potential for urban ization and becoming an urban area in total within the next twenty years.

Q And Rio Rancho is within APJ1?

A Yes, sir.

Q How long has APJ1 been in existence?

A It was identified in 1967.

Q By who?

A By the local elected officials, the board of directors of the Middle Rio Grande Council of Governments and identified to the Department of Housing and Urban Development and the Department of Transportation.

Q The latter two being federal agencies?

A Yes, sir.

Q Who agreed with that identification?

A Yes, sir.

Q That identification was made based upon certain criteria, was it not?

A Yes, sir

Q Were those criteria provided also at the federal agencies, if you know?

A Basically, yes. Not in total.

Q Now, you keep records, and by you I mean COG, Mr. Pierce --

A Yes.

Q Unless I say otherwise. You keep records of the growth of particular entities within your region, don't you?

A All of them, yes, sir.

Q All of them.

Based upon those records you can say that Rio Rancho's population has increased about five-fold since 1970, isn't that so?

MR. DEVORKIN: From when?

MR. ARISOHN: From 1970 to the present time.

A That would be approximately correct. It might be slightly greater than that.

Q A little greater than that possibly.

You have been to Rio Rancho?

A Yes, sir.

Q Many times?

A Yes, sir.

Q Are you familiar with the Rio Rancho sewage system or treatment plant?

A Yes, sir.

Q Have you heard that that plant has been described as one of the most efficient, effective and well operated facilities in the State of New Mexico?

MR. DEVORKIN: I object.

THE COURT: Overruled.

MR. DEVORKIN: It is hearsay, your Honor.

THE COURT: Overruled. He is testifying to hearsay all through his direct.

MR. DEVORKIN: Has he heard from someone else?

THE COURT: Overruled.

MR. DEVORKIN: From who?

THE COURT: What doubt was in the document you put in.

Q The question, sir, is: Do you have any knowledge of how the Rio Rancho sewage treatment plant is considered?

A Yes, sir.

Q How it is considered by New Mexico State?

A The New Mexico State Environmental Improvement Agency has the responsibility under state statute to maintain surveillance over the quality of effluent from all facilities, both public and private.

Q Do you know what their opinion is of the sewage treatment plant at Rio Rancho?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A I am informed by members of the EI staff in the district that it has one of the highest ratings in the state, yes, sir.

Q Have you seen the road to Rio Rancho?

A Yes, sir.

Q Some of them have curbs and gutters, do they not?

A Yes, sir, in the developed area.

Q And they are paved?

A Yes, sir.

Q Some roads have a caliche surface, isn't that so?

A Yes, sir.

Q What is caliche, would you tell his Honor and the jury?

A Caliche is a form of soil which is extremely hard when dry and extremely soft when wet. It is a clay-like substance or clay-like earth. In fact caliche is what it is. It is very limited in sand content.

Q But when impacted it has a very hard surface, doesn't it?

A Yes, sir.

Q Some of the roads in Rio Rancho are caliche, are they not?

A Yes, sir.

Q Are there also roads at Rio Rancho to your knowledge which are dirt roads not caliche?

A Well, I would describeall the roads caliche and anything that is unpaved is dirt roads. Caliche clay is a dirt road.

Q Anything in that part of the world is called caliche, is that right?

A That's a form of earth, yes, sir.

Q Are you familiar with the county standards for roads in New Mexico?

A Yes, sir.

Q Do you know whether the roads at Rio Rancho are consistent with county standards?

MR. DEVORKIN: Which county are we talking about?

MR. ARISOHN: Sandoval County.

MR. DEVORKIN: And which roads?

MR. ARISOHN: I will take it a step at a time.

Q I take it that you would agree that the paved roads at Rio Rancho are consistent with county standards, Sandoval County standards, are they not?

A They would exceed county standards.

Q And that the caliche roads are also consistent with county standards?

A The only standards which exist that I am aware of for county roads where there is no development is just maintaining accessible or traversability.

Q So a caliche road would comport with county standards in New Mexico.

A Yes, sir.

Q Part of what COG does is to look at population and population projections within your particular area, isn't that so?

A Yes, sir.

Q In doing so I take it you work closely with the Bureau of Census?

A Yes, sir.

Q And also with New Mexico state agencies?

A University of New Mexico, Bureau of Business Research.

Q Are they a state agency?

A Yes, was. As we noted before they are designated by the State of New Mexico as that is one of their functions.

Q Rio Rancho is within southern Sandoval County. That's a geographic fact, isn't it?

A Yes, sir.

Q In COG's May 1975 area-wide comprehensive planning development strategy -- excuse me, it is not in evidence. I thought it was.

MR. ARISOHN: Please mark this, Mr. Frezzo.

xxx (Defendant Howard Friedman and Henry

Hoffman Exhibit EF marked for identification)

Q Mr. Pierce, do you recognize EF for identification?

A Yes, sir.

Q What is it?

A Area-wide comprehensive planning and development strategies.

Q Put out by your organization?

A Yes, sir.

MR. ARISOHN: We offer it.

MR. DEVORKIN: May I see it?

THE WITNESS: It is dated May 1975.

MR. ARISOHN: Let me show that to Mr. Devorkin.

MR. DEVORKIN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit EF received in evidence)

A pm

Q Do you know what COG May 1975 comprehensive planning strategy was in terms of population for the year 2000 in southern Sandoval County?

A Yes, sir. Do you want me to give you an exact reference?

Q That would be helpful.

A I am sure it is in here.

Q Look at page 16.

A I am sorry, I have been unable to identify the exact reference. I can do it from memory if you like, it is contained in some other documents.

Page 16 provides a graphic display. I think we have the wrong one.

Q Referring you to the left-hand column.

A I am sorry.

Q What was that projection for southern Sandoval County for the year 2000?

A Approximately 60,200 persons.

Q How do you define geographically southern Sandoval County?

A All of the area between APJ1 above Bernalillo County.

Q Which includes what?

A Which includes the communities, the town of

Bernalillo, Corrales, Placetas and Rio Rancho.

(Defendant Howard Friedman and Henry Hoffman Exhibit EG marked for identification) xxx

Q Do you recognize EG for identification, Mr. Pierce?

A Yes, sir. This is a copy of our socioeconomic projections to the year 2000 for APJ1.

Q Date of publication?

A August 1976.

MR. ARKIN: We offer it. I show it to Mr. Devorkin.

MR. DEVORKIN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit EG received in evidence) xx

Q So you revised that projection, which we just spoke about, in August of 1976, did you not?

A Could we be more specific, sir, projections for which year?

Q Southern Sandoval County, did you not in August of 1976 revise your projection for population growth?

A Yes, sir.

Q By the way, what is the present population--

THE COURT: Wait, don't lose us. You have us on the track now.

MR. ARKIN: All right, I have no intention of losing you, your Honor.

THE COURT: You changed the projection.

MR. ARKIN: In August of 1976.

THE COURT: To what number, Mr. Pierce?

Q Would you look at page 8.

MR. ARKIN: Perhaps I can ask a question to get you what you want, your Honor.

Q Didn't those revised projections show that southern Sandoval County would have a population in the year 2000 between 77,500 and 91,600?

MR. DEVORKIN: I object without the underlying premise set forth in the document.

THE COURT: You may bring that out on redirect.

A No, sir. You will have to be more specific. You offered a range. 77,000, that is a comparative figure we used assuming that Bernalillo County at zero growth and that would move all of the increased population to the north and south.

What we are dealing with in our assumptions was a possible distribution throughout the entire APJ1.

Q What was your minimum projection, then, for the year 2000, your minimum new projection for August of

1976?

A Based on these assumptions and the distribution, assuming a more even distribution of population throughout the area, we placed the figure of 77,500 in southern Sandoval County area.

THE COURT: Wait. I think the only way to make this comparable is that the same basis on which you projected the 60,000 population in May 1975?

THE WITNESS: No, sir, it is not.

THE COURT: You had better find out, Mr. Arkin, otherwise it goes out.

Q What were the differences?

A The stated assumptions in the document, point one, this --

Q I am asking you what the differences were in the assumptions for the projections in the 1975 comprehensive report and the August 1976 report, which you now have in your hand.

A One, the total for APJ1 of 704,700.

Q Was larger?

A Yes, sir.

Q Was that the overall population for APJ1 was projected as higher, is that correct?

A Yes, sir.

Q So that the portion attributed to southern Sandoval County would also be higher, am I not correct?

A Yes, sir, in this type of distribution.

Q What other differences, if any -- what other different assumptions, if any, were utilized in August 1976 which were not utilized in the 1975 study, if you know?

A Two primary ones. There are additional ones I would have to refer to, but, again, these assumptions are based on the success of presumed activities in the area and the inner action among the communities.

For example, many of the actions taking place within Bernalillo County in some degree or another encourage the development or increase in population in southern Sandoval County.

Q Do you agree that Rio Rancho will experience a substantial portion of that growth projection for southern Sandoval County?

A Yes, sir.

Q Do you believe that if the population of southern Sandoval County, as projected for the year 2000, to wit, 77,500, occurs, that Rio Rancho's population based on those projections will be somewhere around 50,000?

A Our individual forecast, if I may, for the town of Bernalillo suggests somewhere between ten and 15,000 persons.

It would seem reasonable to assume that the Corrales area might increase to around 10,000.

Therefore, if the other assumptions are correct, then 50,000 would be a reasonable figure.

Q A reasonable projection for the year 2000 for Rio Rancho?

A Yes, sir.

Q Do you consider these projections to be conservative and reasonable ones?

A I consider them to be conservative and reasonable if one is willing to accept the assumptions which underlie them as stated in the documents, yes, sir.

Q These assumptions do not include or take into account any increase in the population of Rio Rancho which may arise as a requirement from the efforts of the particular private developer involved, do they?

A No, sir, we did not try to anticipate what any individual developer or community might do.

Q So that AMREP's national efforts, advertising, promotion and so forth in trying to attract people to the Rio Rancho area may well enhance Rio Rancho's portion of the overall population or increase the population absolutely, isn't that so?

A I would say that that is within the realm of possibility and I am not qualified to make those judgments.

MR. DEVORKIN: I would move to strike the answer on the basis of the qualification.

THE COURT: I will take it for what it is worth.

Q Would you agree that the basic attractiveness, if you will, of southern Sandoval County could result additionally in migration from other parts of Albuquerque or other parts of New Mexico which might in itself enhance the population of southern Sandoval County and Rio Rancho?

MR. DEVORKIN: I object. Mr. Arkin is testifying about Sandoval County and its attractiveness.

MR. ARKIN: It is cross examination.

MR. DEVORKIN: He should ask the witness about the facts.

THE COURT: The witness can say he doesn't believe it.

Q Do you believe southern Sandoval County is attractive, sir?

THE COURT: Come on, Mr. Arkin, let's get down something important.

MR. ARKIN: May the question which I previously asked be answered then, your Honor?

THE COURT: Yes.

THE COURT: Do you remember it?

A The developed community is found attractive by a number of people with whom I have come in contact. It is one of the alternative choices in the area that certain groups of people find to their liking.

Q Which may contribute to a greater growth in population than the projections contained in your 1976 study, isn't that so?

A Again, I could only say that lies within the realm of possibility in my opinion.

Q Are you familiar with the energy belt in New Mexico?

A Yes, sir.

Q What is the energy belt?

MR. DEVORKIN: Your Honor, I object and ask for a side bar, please.

THE COURT: All right.

(At the side bar)

THE COURT: Yes.

MR. DEVORKIN: I think there should be an offer of proof.

THE COURT: What has this energy belt got to do with this case?

MR. ARKIN: The energy belt, if your Honor please, abuts Rio Rancho and there are now plans going on to build or possibly build a road across Rio Rancho right to this uranium center which has 40 percent of the known reserves in the world of uranium.

I want to ask him whether this wouldn't enhance the population.

THE COURT: In addition to what he has already testified to?

MR. ARKIN: Yes, your Honor.

MR. DEVORKIN: I object for a very specific and I think a good reason, your Honor. This company never sold this property to anybody with the thought in mind or representation that it was going to be a good development or a good investment because there was uranium lying X miles away from Rio Rancho and to the north and that because of that there would be a tremendous community at Rio Rancho. It never sold to that effect.

Our understanding is that up until very recently the development of that area was out of the question.

Very recently, long after the period we are concerned with in this case, there has been activity up there and now to justify the representations about good investment by facts that never existed at the time when they were making representations is not fair. It is an event that is going on post hoc.

THE COURT: You brought in figures from '74 and '75 which were post hoc figures as to what had gone on, after the victims that we heard from.

Secondly, I will allow you to bring that out on redirect examination for the purpose of the weight, but I will let it in now.

(In open court.)

MR. DEVORKIN: Your Honor, would you give us a moment, please?

(Pause.)

MR. DEVORKIN: Thank you, your Honor.

THE COURT: Go ahead.

BY MR. ARKIN:

Q Mr. Pierce, you were asked what the energy belt was?

A Perhaps you are referring to the uranium belt where there are natural uranium ores or you are referring to the total energy resources which exist in New Mexico, which might be developed in the next few years?

Q As part of the energy belt, there is an energy belt in New Mexico, is there not?

THE COURT: Is there an area in New Mexico knowns as the energy belt?

THE WITNESS: Not as such, no, sir.

THE COURT: All right, not as such.

Q Is there an area abutting or near Rio Rancho which contains large deposits of uranium?

A Yes, sir.

Q Is that a uranium corridor?

A Yes.

Q That contains 40 per cent of the known world's reserves of uranium, does it not?

MR. DEVORKIN: I object, your Honor, to that.

THE COURT: Overruled.

MR. DEVORKIN: If he is qualified to answer it.

THE COURT: He can answer it. Not you. This is a very intelligent person you put on the stand, Mr. Devorkin. He knows what he knows and he doesn't know. He doesn't need you to coach him.

A The current estimates do suggest that about 40 per cent of the world's available uranium ores are located in the northwest quadrant of New Mexico.

Q Does that uranium corridor abut Rio Rancho?

A It extends from an area south of Cuba in Sandoval County southward toward -- along the western portion of the Rio Pueraco and then moves essentially from southern Sandoval County area westward towards the grant Milan area, Mount Taylor area some 60 miles to the west and then beyond that towards Gallup, New Mexico.

Q For those of us who do not have the familiarit- with New Mexico that you do, does the uranium corridor abut Rio Rancho? Is it near Rio Rancho?

A Near in terms that it is west of the Rio

Pueraco, which is perhaps eight to ten miles from the western escarpment.

Q Therefore, the boundary of Rio Rancho, the boundary line of Rio Rancho?

A I can't answer that question. The western boundary of Rio Rancho to my knowledge is on the western escarpment so the energy -- the uranium resources which are being explored now lie anywhere from eight to ten miles to the west.

Q Has your organization studied the feasibility of improving transportation from Rio Rancho to the uranium fields?

A Approximately three months ago the board of directors of the COG asked the staff to institute a project to explore the feasibility of developing a new transportation facility from southern Sandoval County westward into that uranium corridor for the purposes of providing greater employment opportunity for people in southern Sandoval County as well as providing greater accessibility to the areas under exploration and under production.

MR. DEVORKIN: Your Honor, based on the time period, I move to strike the answer.

THE COURT: Overruled.

Q This feasibility study -- did this feasibilitstudy embrace the notion of a road crossing the Rio Rancho property to the uranium fields?

A One of the alternatives we were asked to explore was the possible take off point that road called Southern Boulevard or another alternative Northern Boulevard in the northern portion.

Q Would you point out Southern Boulevard on this map to the jury?

A Southern Boulevard is this white line extending across here to the western escarpment and I believe Northern Boulevard is this one right here.

Q The uranium fields lie out in this area right over here?

A No, quite a ways out in here. The Rio Pueraco, this river, it is a dry river, lies over in this area.

MR. DEVORKIN: May the record reflect that the witness has pointed about a foot or foot and a half off the map.

THE COURT: The witness has already said eight to ten miles from Rio Rancho.

Q I take it that if this road were ever built, that is Southern Boulevard and Northern Boulevard to the uranium fields, that that would enhance the projections for population at Rio Rancho, would it not?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A It could. I think this requires a qualified answer, if I may because working in the entire area we are making substantial projections and for the area in grants in Milan, New Mexico and certainly those kinds of projections might find some redistribution based on accessability.

Q In the Rio Rancho, southern Sandoval area?

A Yes, sir, as well as the Albuquerque urban area.

Q Southern Boulevard and Northern Boulevard crosses the Rio Rancho property, don't they?

A I am sorry?

Q Southern Boulevard and Northern Boulevard both transverse across the Rio Rancho development?

A Directly east-west, yes, sir.

Q Is Rio Rancho included in the Albuquerque standard metropolitan statistical area?

A Yes, sir.

Q What is the Albuquerque standard metropolitan statistical area?

A It is comprised of all of Bernalillo County and all of Sandoval County.

Q It previously included only Bernalillo County, didn't it?

A That's correct.

Q That was changed when?

A Following the 1970 census, approximately 1972, the early part of 1972.

Q To your knowledge, that was changed and it is MSA, meaning the analysis we just refer to, was expanded because of the increase in the rate of change of population in Sandoval County as well as the absolute increase in population, isn't that so?

A Yes, sir, those are the criteria used by the U.S. Bureau of Census.

Q To your knowledge, has Albuquerque been annexing surrounding areas since about 1965?

A The process of annexation has gone on for many years. As I testified earlier, since the '20's.

Q The city has since 1965 at least been growing a little bit fatter around the middle, hasn't it?

A Yes, sir.

Q Some of these annexations have been with respect to land to the west of Albuquerque or in a westerly direction, I should say?

A Yes, sir.

Q As a rule of these annexations you have to say that the city limits of Albuquerque have been brought closer to Rio Rancho, have they not?

A Yes, sir.

Q Has there been more rapid development to the northwest of the city of Albuquerque in the last ten years than previously?

A Yes, sir.

Q Is a principal reason for that the existence of an additional bridge at I40 crossing the Rio Grande?

A The Interstate 40 crossing was completed in about 1968 and certainly that increased accessability and enhanced development on the west side.

Q As part of your organization's planning for the future development of the region, do you record traffic densities on bridges that span the Rio Grande?

A Yes, sir.

Q Hasn't the traffic over these bridges steadily increased over the years, year by year?

A Yes, sir.

Q Does your organization see a need for the construction of additional bridges across the Rio Grande?

A Bridges,additional river crossings,are in the long range plans for the area, yes, sir.

Q How many additional bridges has your organization recommended?

A The current recommendations are three additional river crossings in the long range plan.

Q Are you familiar with your COG publication entitled 1955 Development Patterns, Government Exhibit 44?

A Yes, sir.

(Continued on next page.)

Q Does that publication state that at least one additional river crossing will be established by 1980 and a second crossing by 1985?

A It indicates they should be created, yes, sir.

Q I am asking you whether it says at least one additional river crossing will be established by 1980 and a second one by 1985.

THE COURT: Will be or should be. This organization I gather has no power to implement its decisions. All they can do is recommend.

MR. ARKIN: I understand. I am just asking whether the bulletin or the pamphlet said what I quoted, your Honor.

MR. DEVORKIN: It is in evidence.

THE COURT: Even if it says it, we all know he cannot possibly mean it.

A If I may qualify the answer, sir, it is dependent upon the availability of federal aid assistance with the development of federal aid system transportation facilities.

Q Has Albuquerque -- not Albuquerque, but Rio Rancho recently been included in the Albuquerque transportation planning area?

A Would you repeat that, please?

Q Do you know what the Albuquerque transportation planning area is?

A Yes, sir.

Q Has Rio Rancho recently been included within that area?

A Yes, sir.

Q Would you tell his Honor and the jury what the transportation area is?

A The transportation planning area is all of the portion of APJ1, the urbanized area of Bernalillo County and the entire southern Sandoval County portion of APJ1.

Q Do you know why it was that Rio Rancho was recently included within this planning area?

MR. DEVORKIN: Could we designate who made the decision? Is he testifying the state of mind of somebody else that we don't even know who they are.

MR. ARKIN: I suggest Mr. Devorkin ask that on redirect.

THE COURT: Who created this area?

THE WITNESS: The Council of Governments creates the area and submits their recommendations to the state highway department and the federal highway administration --

THE COURT: This gentleman's organization did it. Go ahead.

Q Do you know why this was done, sir? Why Rio Rancho was included within the planning area?

A Yes, sir, because of the potential impact of all portions of southern Sandoval County on future -- demand for future transportation.

Q To your knowledge don't people who live at Rio Rancho commute to Albuquerque to work?

A Yes, sir.

Q And some few people come from Albuquerque to Rio Rancho to work, too, don't they?

A Yes, sir.

Q There is a municipal bus service between Rio Rancho and Albuquerque?

A Yes, sir.

Q By the way, do you know whether Rio Rancho is included within the public school system for Albuquerque?

A Yes, sir, it is served by the Albuquerque public school system in their District No. 2.

Q Do you know whether there are now plans for the building of a new airport on the west mesa?

A Yes, sir.

Q Your organization is responsible for obtaining all the clearances and permissions from the Federal Aeronatuics Administration.

A Council of governments is doing the planning and project development, yes, sir.

Q Where, if you will, on Government Exhibit 1075-A is this new airport projected to be built?

A T he center of the development would be approximately in this area. It is on the northern portion of the Westland Development Company, Inc. lands.

Q This is on the west mesa, is it not?

A It essentially would be on the northern portion of what we would be describing as the Atrisco land grant.

MR. ARKIN: Thank you.

THE COURT: How far would that be from Rio Rancho?

THE WITNESS: Approximately six miles.

THE COURT: Thank you.

Q Has there not been on the west mesa in the last ten years significant development including the construction of housing, industrial and commercial facilities and educational institutions?

A Would you be more specific about the west mesa area you are describing?

Q As part of Exhibit 1075-A which is on the west side of the Rio Grande River below the escarpment

A Below the escarpment. Yes, sir, in relative terms there has been significant development.

Q Is it a policy of COG to encourage development of satellite communities within the Albuquerque urbanizing area?

A That is one of the objectives of the collective group of local governments and local elected officials.

Q What is the Albuquerque urbanizing area?

A The urbanizing area, as we have defined, is all of APJ1 extending from above Bernalillo to south of the city of Milan.

Q What is a satellite community?

A We think in terms of satellite neighborhoods or satellite communities, satellite communities being in terms of one of a family of communities within an urbanizing area as opposed to satellite neighborhoods within a city or urban area.

Q Are COG's policies in this respect compatable with the growth of Rio Rancho?

A Yes, sir.

Q Future growth?

A Yes, sir.

Q Based on your knowledge of the Albuquerque area, are there national and legal constraints on Albuquerque's growth to the east, north and south?

A Again may we be specific in terms of defining Albuquerque as a city, an urban area or as an urbanizing area.

Q Let's take Albuquerque as an urbanizing area.

MR. DEVORKIN: Can we define what we are actually talking about?

THE COURT: Magnet, is that what you mean by urbanizing area?

A Again the definition we have used is that area which has a potential for being or becoming developed to an urban style within twenty years.

THE COURT: All right.

Q My question again: If you take the Albuquerque urbanizing area, which is larger in size, is it not, than Albuquerque municipal city, is that correct?

A Yes, sir.

Q If we take the Albuquerque urbanizing area, are there not constraints to the east, north and south in terms of future growth?

A Yes, sir.

Q Those constraints are both national and legal ones?

A Yes, sir.

Q And that the Siandia and Manzano Mountains provide a barrier to development on Albuquerque's east boundary, again I am referring to the urbanizing area?

A Yes, sir.

Q And that the Siandia Indian Reservation places a barrier on Albuquerque's growth to the northeast?

A Yes, sir.

Q And the Isleta Indian Reservation has a similar barrier to Albuquerque's growth on the south?

A Yes, sir.

MR. DEVORKIN: Now we are talking about Albuquerque.

Q I meant to use urbanizing area and I believe the witness understands that.

The answer is yes.

A Yes, to clarify the definition that I assume we are using, it is the Albuquerque urbanizing area which lies within Bernalillo County.

MR. ARKIN: Yes, your Honor.

Q You have been promoted, Mr. Pierce.

THE COURT: Demoted.

MR. ARKIN: In my position relative to your

Honor, it makes it too embarrassing.

Q Isn't it a fact that the land to the southeast of Albuquerque is largely federal lands and that expansion of the city in that direction is also constrained?

A Yes, sir.

Q You testified about the Atrisco land grant just recently.

Are you aware that the Atrisco land grant, which you identified to the jury just a while ago, has had title problems dating back to 1801?

A Yes, sir.

Q And that there has been consistent litigation and negotiation to clear the title all during that time up until recently?

MR. DEVORKIN: What does recently mean?

Q Say 197 --

THE COURT: He has given us a figure of 1968. The witness on direct said this was solved in 19 -- resolved is the word he used in 1968.

MR. ARKIN: I wish to probe a little bit, your Honor.

1972 he said, your Honor.

THE COURT: Go ahead.

Q Up through, let's take it up to 1968, so we can be precise, that up to that point there was consistent litigation and negotiation to try to resolve title problems in respect of the Atrisco grant, isn't that so?

A Some litigation, yes, sir.

Q And some negotiation?

A A lot of negotiation.

Q A lot of talk and some litigation, right,and then they started in 1968 with Westlands Corporation to resolve the title problem?

A Yes, sir.

Q And to some extent they were resolved by 1972?

A Yes, sir.

Q But there is still litigation pending, is there not, in respect to portions of the Atrisco grant?

A On the outer boundaries, the periphery and this is being taken to court at the present time. I am not sure of the exact status, but this is currently in litigation.

Q Are you familiar with North Albuquerque Acres?

A Yes.

Q North Albuquerque Acres also has legal problems, doesn't it, clouds on its title?

A Not that I am aware of, no, sir.

Q Are there not certain problems in respect to title which have impeded the use of North Albuquerque Acres for development?

A I will try to define that if I may. I am not sure it is a cloud on the title or a legal problem. It's the fact that the platting of the area was incompatible with the topography, the national geology of the area.

Q That is a platting that was done about 1920?

A Yes,sir.

Q Before it can be developed you have to reassemble the plot, isn't that so?

A Well, that would be the desirable way to proceed, yes, sir.

Q But there has been a great deal of difficulty in attempting to develop that area of Albuquerque?

A That is correct.

Q And that area of Albuquerque, North Albuquerque Acres, is a substantial portion of the vacant land in the northeast portion of Albuquerque, is that not so?

A Again we are going to have to ask for a definition of the northeast portion.

Q Let's take the northeast portion of Albuquerque municipal city limits.

A Well, all of that area lies outside of the city of Albuquerque limits.

Q Let's expand it to the urbanizing area, then.

A It's at the extreme northeast boundary adjacent to the Siandia Indian Reservation.

Q That constitutes a substantial portion of what might be described as vacant land in the northeast, is that not so?

A Over fifty percent of that which we have described as the Elena Gallegos Grant.

THE COURT: Does that interfere with your estimate of 6,000 acres?

THE WITNESS: No, sir.

THE COURT: 6,000 acres excluded in the north?

THE WITNESS: Yes, sir.

Q Are you familiar with a city planning department study which concluded that there were substantial legal problems that continued to prevent the development of North Albuquerque Acres?

A Yes, sir.

Q Is it not a fact that there are substantial areas to the east and northeast of Albuquerque which have severe soil limitations for construction?

A Yes, sir.

Q And that the area on which Rio Rancho was lcoated comparatively has slight soil limitations for construction?

A That is correct.

Q And that in the view of COG Rio Rancho is a highly successful, is a community described as highly successful -- that Rio Rancho has been described by COG as being highly successful for development from both a physical and planning point of view.

A Successful?

Q Yes.

A No, sir, I don't think that is a correct statement.

Q Will you look at page 19 of the area-wide comprehensive planning.

MR. DEVORKIN: Can you give an exhibit number?

MR. ARKIN: I am sorry. Would you mark this, Mr. Frezzo.

(Defendant Howard Friedman and Henry Hoffman Exhibit EH marked for identification) xxxx

THE COURT: Let's qualify this and then adjourn until 10:00 o'clock tomorrow morning.

Q Do you recognize EH for identification, Mr. Pierce?

A Yes, sir.

Q What is it?

A This is part of a series of area-wide planning documents that we have produced. This one is area-wide comprehensive planning entitled "A Discussion Document Relative to APJ1".

Q It is a document produced by your organization?

A Yes, sir.

Q This is not the entire document, though, is it?

A No, sir.

Q Am I correct in saying that the only copy extant of this particular document is in your office in Albuquerque?

A I don't believe that is a correct statement. It was published.

Q Nonetheless, you do have a copy of this in your office in Albuquerque?

A Yes, sir.

Q Are you able to identify page 19?

A Yes, sir.

Q Is that a page which appeared in the original publication?

A To the best of my knowledge, that is correct.

MR. ARKIN: We offer page 19.

MR. DEVORKIN: I don't know what your Honor plans with respect to sitting tonight. I would like to read through this document. It is not a complete document. by Mr. Arkin's own questioning and I would like to have read through it before deciding whether I have an objection or not.

THE COURT: We will adjourn until tomorrow morning at 10:00 o'clock.

(Adjourned to Wednesday, December 8, 1976 at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Charles Woodward (Resumed)	3981			
Albert I. Pierce	4048	4137		

EXHIBIT INDEX

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1074-A	3997	4005
1075-A	4007,4033	4044
1100-A,1100-B,1100-C,1100-D		4035
1075-C	4034	
58		4112
59		4117

Defendant Howard Friedman and Henry Hoffman	Identification	In Evidence
EF	4149	4149
EG	4151	4151

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 8, 1976
10:10 A.M.

Trial Resumed

(In open court - jury not present)

MR. DEVORKIN: Before the witness and the jury comes in I have a request.

THE COURT: What is that?

MR. DEVORKIN: I think your Honor already has a copy --

THE COURT: It was given to me five minutes ago.

MR. DEVORKIN: I understand.

We would renew our application based on the memorandum of law we submitted on uranium.

THE COURT: I have not read it yet.

MR. DEVORKIN: In light of that testimony --

THE COURT: There is an application being made in the court. Aren't you interested in listening to it.

MR. DEVORKIN: In light of that testimony, your Honor, because Mr. Pierce is still on cross examination, I would request that after cross examination is completed you allow me a short recess to speak to Mr. Pierce before redirect so that I can inquire of him whether I want to clarify that issue further or not because I haven't spoken to him about that issue.

THE COURT: All right.

MR. DEVORKIN: Thank you.

(Jury present)

ALBERT I. PIERCE, resumed.

THE COURT: You may proceed.

MR. ARKIN: Thank you.

(Pause)

MR. DEVORKIN: Your Honor, may I have a brief voir dire on Defendants Exhibit EH which has been offered?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

XX

Q Mr. Pierce, showing you Defendants Exhibit EH, which actually has been marked as Page 19 of a larger document, correct?

A Yes, sir.

Q The larger document has a cover page on it called area-wide comprehensive planning.

A That is correct.

Q There was a larger document produced by your agency, correct?

A Yes, sir.

Q This was a discussion type document leading up to a final publication of another document.

A Part of a series of documents related to area-wide comprehensive planning.

Q Do you recall whether this one was published?

A No, sir, I don't.

Q There is no publication date on it?

A No, it is on the inside cover.

THE COURT: Wait. There was something else coming out. Let him finish. What were you going to say?

A No, sir, this does not have the inside cover on it.

Q The next page in here is an unnumbered page, is that correct?

A This one is unnumbered, yes, sir.

Q Then this document skips to page 17 and then skips from 17 to 19, correct?

A Yes, sir.

Q And the bottom of page 19 there begins a discussion mentioning Rio Rancho Estates, correct?

A Yes, sir.

Q And that discussion you would agree is not completed on page 19, is it?

A That is correct.

Q Page 20 is not in the document, is it?

A Not in this copy, no, sir.

Q In fact, 20 through 25 are not here either, are they?

A That is correct.

Q There are other pages missing in between the pages that are in here, aren't there?

A Yes, sir.

Q Some of those pages include discussion of facts contained in here or premises contained in this entire document?

A Yes, sir. They relate to other parts of APJ1.

Q They also contain other discussions about Rio Rancho, the missing pages, correct?

A To the best of my knowledge, yes, sir.

MR. DEVORKIN: I object, your Honor.

THE COURT: Sustained.

CROSS EXAMINATION CONTINUED

BY MR. ARKIN:

XX

Q Mr. Pierce, I show you Defendants EH for identification and ask you to read to yourself, not out loud, the paragraph at the bottom of that page. I am going to ask you a question in respect to it.

(Pause)

MR. DEVORKIN: Your Honor, I think I object unless we have the whole document available for questioning.

THE COURT: He is merely asking the witness to refresh his recollection prior to putting his question. The document is not in evidence.

THE WITNESS: Yes, sir.

Q All right, sir, my question then is whether your organization in one of its publications made the statement that Rio Rancho was highly suitable for development from both a physical and planning point of view?

MR. DEVORKIN: I object.

THE COURT: Sustained.

Q Do you know whether your organization has ever published such a statement?

MR. DEVORKIN: I object.

THE COURT: Sustained. Produce the whole document so we can see everything he said about Rio Rancho and produce the whole document so that we can have the premises and assumptions made as a background of that statement.

Then I will let you go into it.

MR. ARKIN: Yes, your Honor.

Q Have you observed the growth of Albuquerque in the last fifteen years, sir?

A Yes, sir.

Q How would you describe it?

A May we be more specific? Are we speaking of the city of Albuquerque, the Albuquerque urban area or the urbanizing area once again?

THE COURT: And which part of the city depending upon what year, I gather, the city grows from year to year.

Q My question, Mr. Pierce, is taking the Albuquerque urbanizing area, how would you characterize the growth of the Albuquerque urbanizing area over the past fifteen years?

A It has been expanding in terms of residential, commercial and industrial activities. The industrial activities becoming more diverse than in past years and expanding outward in terms of geographic area, that is the city municipal limits expanding outward into the urban area surrounding the city limits.

Q How would you characterize the rate of growth?

A It has been somewhat spasmodic during the past fifteen years since in the early 1968-'70, '71 time period the area was experiencing some recession, as was true throughout the United States.

There was also recessionary pressures in that time period due to a reduction in one of the primary employment areas, that which was associated with Atomic Energy Commission.

Q The Siandia?

A The Siandia Corporation and other related industrial activities.

Q Other than that recessionary period which affected the entire country and the Siandia Corporation circumstance, would you say or characterize the rate of growth in the last fifteen years as being rapid or great or significant?

A I would say it's relatively rapid and significant with the area itself.

Q When you testified yesterday, sir, on direct examination, that is when Mr. Devorkin was asking you questions, he asked you about the 1985 land use plan.

Do you recall that?

A Yes, sir.

Q Doesn't that report, I will call it a report, say that the west side would be the fastest growing area of the city in percentage terms?

MR. DEVORKIN: When are we talking about?

THE COURT: Fix the time.

MR. ARKIN: Let me get the report. It is one of your exhibits, isn't it, Mr. Devorkin?

MR. DEVORKIN: It is not in evidence.

MR. ARKIN: It is an exhibit I asked.

THE COURT: 1985 is not an exhibit.

MR. DEVORKIN: It is marked as Government Exhibit 60, but it is not in evidence.

MR. ARKIN: I see.

(Pause)

MR. ARKIN: Mark this for identification, Mr. Frezzo.

In fact, mark this page 3 of this exhibit.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit EI marked for identification.)

Q Mr. Pierce, have you read the 1985 land use plan?

A Yes, sir.

Q Do you have any recollection of whether or not within that document the west side was described as the fastest growing area of the city on a percentage basis?

MR. DEVORKIN: Your Honor, I object, for one reason:

We should be very precise about what west side this document is talking about, because I think it is restricted to Bernalillo County.

THE COURT: Is that true?

THE WITNESS: Yes, sir.

MR. ARKIN: I will ask the witness if that's right.

A This, by way of explanation, plan was related to the designated Albuquerque area, which was all of Bernalillo County, the urban area of Bernalillo County, and one zone which at that time went up into the community of Corrales.

Q Which abuts southern Sandoval County, is that correct?

A Corrales is in southern Sandoval County.

Q Bernalillo County abuts Sandoval County?

A Yes, sir.

Q And that is where Rio Rancho is, in southern Sandoval County?

A Yes, sir.

Q This document refers or speaks of the west side up to the northern-most county of Bernalillo County, is that not correct?

A Yes, sir.

Q And do you recall a statement being made in a document that the west side referring to the area we just described would be the fastest growing on a percentage basis?

MR. DEVORKIN: Let him read the entire sentence, because he is only referring to one phrase of the sentence.

THE COURT: I am sorry, he is asking the witness. He has a right to question the witness as he sees fit.

MR. DEVORKIN: All right.

A I do not recall that specific quotation.

Q I refer you to EI for identification (handing).

A Yes, sir, I now recall the statement.

Q Which is that the west side, as defined in that document, is the fastest growing on a percentage basis, is that correct?

A Taken out of context, that is a correct statement, yes, sir.

Q It says that, does it not?

A Yes, sir.

Q Mr. Pierce, would you agree in light of the constraints we have been discussing that the logical pattern of growth of the Albuquerque portion of the urbanizing area, the Albuquerque urbanizing area is to the west and northwest?

A I would like to be precise in terms of time and the target years we use.

If we are speaking of ultimate development, I would agree with that statement, yes, sir.

THE COURT: What do you mean by "ultimate development"?

THE WITNESS: Ultimate without respect to specific time periods, sir, but where the area is likely to grow --

THE COURT: While I'm still alive?

I mean, you say without regard to a time period.

It could be the year 2050, couldn't it?

THE WITNESS: Yes, sir.

THE COURT: The answer is meaningless.

Q Do you have any particular time period in mind, Mr. Pierce?

A In our planning process, we deal with questions of potential ultimate development and then also with respect to target years, which are normally 20 years in advance of the current year or current period, and we move these target years forward in five year increments so that we are always approximately 20 years in advance in our planning efforts.

Q When you speak or, rather, when you responded to my question regarding the pattern of growth of the Albuquerque portion of the urbanizing area, was one of the assumptions in your answer that Albuquerque is not going to grow in a linear fashion, to put it in a little different parlance, street after street in any particular direction?

A The city of Albuquerque could be expected to expand in a linear fashion in the northeast as it is currently doing carrying along the municipal limits as it advances to the north.

Q But that is not true for the other portions of the city?

A No, sir. It's developing in smaller community groupings.

Q And there is vacant space between those groupings within the Albuquerque urbanizing area?

A Yes, sir.

Q Which is characteristic, to your knowledge, of other cities?

A Yes, sir, that's been a pattern, true, in many cities over the years.

Q We spoke yesterday or, rather, you spoke yesterday about the 6,000 acres in the northeast portion of Albuquerque.

Do you recall that?

A Yes, sir.

Q With respect to that 6,000 acres, do you know what portion, if any, has been developed since 1972?

A I would estimate that somewhere between 20 and 25 per cent of that area we identified yesterday has been developed since that period.

Q With single-family homes?

A Predominantly single-family homes, yes, sir.

Q Single-family homes are characteristic, are they not, of Albuquerque?

A The larger percentage of dwelling units is in the form of single-family homes, yes, sir.

Q It is fair to say that the single-family home is characteristic of the way of life in Albuquerque, I should say the southwestern region?

A Yes, sir. I think there is an emphasis on that particular choice alternative.

Q Speaking about that 6,000 acres, did you say that was in the northerly portion of the northeast section of the Albuquerque urban area?

A It is in the northerly portion of the northeast quadrant of the Albuquerque area, yes, sir.

Q Yesterday, when you and Mr. Devorkin did some mathematics regarding the potential density of that area, did your mathematics take into consideration the need for roadways within that area?

A Yes, sir.

Q Well, do you recall that we multiplied or you multiplied out 6,000 acres by seven dwelling units per acre?

Were those the figures you used?

A That would be an average which I would assume to be fair if we look at the current characteristics of the developed areas, yes, sir.

Q At present, there are about 5600 people per square mile in Albuquerque, the Albuquerque urban area?

A No, sir, I do not think that is correct.

Q Do you know how many there are per square mile in terms of density?

A I would have to refer to one of our documents to be precise on that.

We have only a few identifiable square miles where the population does, in fact, exceed 5,000.

Q So, in fact, it may be less than 5,000?

A Yes, sir.

Q Let me ask you another mathematical question. I won't be able to help you.

How many acres are there per square mile, do you know that?

A 640.

Q If you take 640 acres and you divide that into around 5,000, about how much does that come out to?

A Offhand, I'd say about 900.

Q Wait.

A I'm sorry.

Q Even I know that's wrong.

If you take 640 and you divide it into 5,000 , what is the approximate per acre density which you come up with?

A Between eight and nine.

Q And about how many persons based on your knowledge live in a unit, in a dwelling unit?

A The 1970 figure for the Albuquerque urban area for urban population was approximately 3.6 persons per dwelling unit. That is the average.

Q So that if you have 3.6 persons per dwelling unit and you have predominantly single-family homes, you might have two to three homes per acre, is that not correct?

A Yes, sir, with one qualification, if I may.

Q Plase.

A Part of the acreage in any developed area is obviously consummed in public right of way, public lands which reduces the net acreage available for development.

Q That was my next question.

A I'm sorry.

Q That's all right. It saves me.

We have the public rights of way, which also devour, I should say eat up a part of that acreage, is that correct?

A Yes, sir.

Q And you will probably have some parks, isn't that true?

A Yes, sir.

Q And schools?

A Yes.

Q And you will have other public areas, say, for pipelines or transmission lines and that kind of thing?

A Yes, sir.

Q And there might be community centers, if you will?

A Yes, sir.

Q So that if you were to do any projections as to the amount of population which the 6,000 acres will eventually come to have, you would have to eliminate from the 6,000 times nine or twelve, which was computed yesterday. all of the public right of way land and all of the roadway land and --

THE COURT: They are the same, aren't they?

MR. ARKIN: Well, that is true, your Honor; that's true.

Q Well, the public right of way land, I might say communally used land, isn't that so?

A Yes, sir.

Q And if you were to compute the remainder of the acreage upon, or utilizing the predominantly single-family unit as the basis for computation, you would come up with considerably less than, say, 54,000 people, would you not?

A If I may delve into the area of speculation or assumptions, if 20 per cent of the land, approximately 20 per cent of the land is consumed in public right of way or public use --

Q That reduces it down to 4800 acres, then, right there?

A Yes, sir.

So we are dealing with the numbers of dwelling units of a type by net acreage or the average number of gross acreage, therefore, the figures might vary from somewhere between four and five to six to eight; if we are using net acreage or gross acreage we would be making our calculations at the four or five unit break level.

Q And not the seven but four or five?

A Not the seven, that's correct.

THE COURT: That would change your figures as to population per square mile now, wouldn't it, because the population per square mile is on gross acreage, not net acreage?

THE WITNESS: That's correct.

THE COURT: The population per square mile would go up on net acreage?

THE WITNESS: Yes, sir. But we would still --

THE COURT: Because you take the rights of way out.

Go ahead.

Q With respect to this 6,000 acres, historically it belonged to a man named Sims, did it not?

A Yes.

Q It was part of the Sims' ranch?

A Yes, sir.

Q Do you know when Mr. Sims died?

A I think it was in the 1968-69 time period. I'm not exactly sure.

Q Up until the time he died, that land was held out of development, was it not?

A Yes, sir.

Q When he died the estate or his estate became the owner of that particular parcel, is that not so?

A Yes, sir.

Q And for a period of time the estate also held out of development?

A I think that would be approximately true, yes, sir.

(Continued on next page.)

Q And, again, with respect to that 6,000 acres as we discussed by public right of way land, about 20 to 25 percent has been developed since 1972, isn't that a fact?

A That would be my estimate, yes, sir.

Q Would it be fair to say that the northeast as we have defined it yesterday, that is the northeast portion of the Albuquerque urbanizing area, will reach its capacity in a short time or a relatively few years?

A Again, could we be very specific whether we are dealing with the northeast quadrant of the city and the urban area or just that area outside of the city limits?

Q Well, I will rephrase it, then.

I will direct the question to the northeast quadrant of the Albuquerque urban area.

Does that make sense to you?

A Yes, sir.

Q So address my question or respond to my question with respect to that particular geographic area.

THE COURT: It may make sense to the witness, but how about the jurors sitting there? They don't know what you are talking about.

A May I describe my interpretation --

THE COURT: That would be helpful.

Q Very. You defined it yesterday. Do it again.

Please define that for the jury and his Honor.

A The northeast quadrant is the center of the city, which is Central Avenue and the railroad, therefore, the entire northeast quadrant begins at that point.

Q And extends to what point?

THE COURT: Wherever you want to draw the line; the city line, the end of the 6,000 acres, New Albuquerque Acres, which is north of the 6,000 acres.

You tell him what line you want to draw.

Q If you were utilizing the Albuquerque urbanizing area, where would you draw the line?

A In the northeast quadrant north to the Siandia Indian Reservation.

Q So as limited in the northern extremity by the Siandia Indian Reservation, is that correct?

A Yes, sir.

Q Taking that geographical area, which is north of the central area and south of the Siandia Indian reservation, would you agree that the northeast would be filled to capacity in a relatively few years or a short time?

MR. DEVORKIN: Can we define the time more precisely, your Honor?

THE COURT: He said in a relatively short years. Let's find out what the witness says.

A It's very difficult, sir, because, again, without a target year in mind, I would have to respond to the question in terms of three kinds of development; infill development in an area which is already developed primarily within the municipal limits; the area that we have been discussing as the Sims property, which is free for development at the present time; and then north of that the area described as Albuquerque Acres, which is an awkward subdivision, meaning that the subdivision is incompatible with the topography and natural characteristics of the land.

So there are three kinds of development that will occur.

If we are speaking in terms of capacity, then, I think our projections would bear out that the first area filled to capacity might well be the Sims area, and in that case I would say that that would probably be in a relatively short period of time, certainly within our target year framework.

THE COURT: That is twenty years?

THE WITNESS: Within twenty years. Perhaps at the present rate of growth that might be attained within the next ten years.

THE COURT: Wait, wait. What is within the next ten years?

THE WITNESS: I was talking of just the central area north of --

THE COURT: You are talking about the Sims area?

THE WITNESS: The Sims area, yes, sir.

THE COURT: When do you say the Sims area should be filled at your present rate of growth assuming it continues?

THE WITNESS: Assuming it continues, I would say the possibility of that occurring within a ten year time frame is reasonable.

THE COURT: All right.

Q You just mentioned the north Albuquerque areas.

Are you familiar with that region of Albuquerque?

A I'm sorry, sir, would you repeat that?

Q You have mentioned the north Albuquerque area.

Are you familiar with that region -- excuse me. If I misspoke, I thought I said, are you familiar with north Albuquerque Acres?

A Yes, sir.

Q And that is in the northeast quadrant, is it not?

A Yes, sir.

Q And that is north of the Sims acreage, is it not?

A Yes, sir.

Q You are aware, are you not, we mentioned yesterday, certain platting problems or legal problems with respect to that area, isn't that so?

A Platting problems, yes, sir.

Q Which serves to impede development?

A Yes, sir.

Q You also are aware of the Isleta Indian reservation, are you not?

A Yes, sir.

Q And that Indian reservation is to the south of the Albuquerque urban area, is it not?

A Yes, sir.

Q And that reservation creates a barrier to the south of the Albuquerque portion of the urbanizing area in terms of growth?

A Yes, sir.

Q This pattern of growth to the west and northwest we spoke about a moment ago --

MR. DEVORKIN: Your Honor, I don't think there is any pattern of growth to the west or northwest.

MR. ARKIN: I think he did.

THE COURT: He testified about the greatest percentage of. That's what he said.

MR. DEVORKIN: I think there is a difference in a pattern.

THE COURT: That's what he said. You may take him over on redirect.

Q Let me rephrase the question.

The pattern of growth to the west and northwest speaking of the Albuquerque -- I am speaking within the Albuquerque urbanizing area -- will occur, in your view, despite the fact that there is vacant land left within municipal, that is, the corporate city limits of Albuquerque, is that not so?

A Yes, sir, I would say that is quite possible.

Q Would you explain that to his Honor and the jury?

A The west area we are dealing with is that area from the Rio Grande to the escarpment of just north of I-40 or the central portion of the area, extending north to the areas under development such as Paradise Hills, that area experiences certain constraints today relative to the need for additional river crossings and the availability of utilities in terms of both water and sewer systems. Those systems would be provided ultimately by the city of Albuquerque.

When the available resources and the local official policies are such that we can provide for additional river crossings and utilities, that would remove many of the basic constraints to development in that area on the west side.

Q And there are now plans or studies going on to increase access to the west side, are there not?

A Yes, sir.

Q The development of the west and west side, the northwest and the west side is not inconsistent, is it, with the overall growth pattern of Albuquerque, to wit, the development of particular vacant land within Albuquerque city limits?

Do you agree with that?

A The development of the west side is compatible with local policies which have been established and are in writing.

Q Speaking of the west side, I am speaking of the west mesa and not the northwest, do you agree that growth to the west, directly to the west, is blocked to a substantial extent by the escarpment and the volcanic nature of the land?

A Yes, sir. That presents a natural barrier to development up on the mesa portion.

Q You would agree, would you not, that a prediction of growth to the northwest within the Albuquerque urbanizing area made ten years ago, fifteen years ago, five years ago would have been a reasonable one?

A Prediction made ten years ago? Yes, sir. I would say that would be a reasonable prediction.

MR. ARKIN: I have no further questions.

THE COURT: Mr. Fleming?

MR. ARKIN: Excuse me, I do have one. Excuse me.

THE COURT: Go ahead.

BY MR. ARKIN:

Q Let me show you Defendant Exhibit BW and ask if on this document you can find or locate the Winrock Shopping Center (handing).

A Yes, sir.

Q Where is that?

A The Winrock Shopping Center is on I-40 at Louisiana. Louisiana is not shown on this map, but it is in the reference.

Q Would you be good enough to point out to the jury where the Winrock Shopping Center is on this particular document?

A These shown in the off purple color (indicating).

Q Then this is Rio Rancho in the upper left-hand corner of the document (indicating)?

A Yes, sir.

MR. FLEMING: I just have one question.

May I have Government Exhibit 44, please?

(Handing to Mr. Fleming)

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Pierce, my name is Peter Fleming. I am one of the attorneys for the defendants.

This Exhibit 44, you testified yesterday this is your document -- I mean your -- I think Mr. Arkin refers to as COG's document.

A Yes, sir, 1985 development pattern.

Q And Mr. Devorkin read to you from page 11, under underlying assumptions.

A Yes, sir.

Q Number 3 is at least one additional river crossing will be established by 1980 with a second crossing by 1985.

A Yes, sir.

Q And the river crossing you are talking about is a bridge going across the Rio Grande to the west mesa or in the direction of the west mesa, is that correct?

A Yes, sir.

Q And, finally, my final question, you did testify and this does read, "The majority of development will continue to occur in the northeast quadrant of the area until capacity is approached and development on the west mesa will increase most significantly after 1980," is that correct?

A Yes. Yes, sir.

Q And that is your firm opinion, COG's firm opinion?

A Yes, sir.

Q And that is on top of the fact that percentage increase on the west side has been greatest over the past ten years?

MR. DEVORKIN: As compared to what?

THE COURT: He said over the last ten years.

MR. DEVORKIN: Still it is compared to what?

THE COURT: The northeast.

MR. DEVORKIN: I don't know what it is compared to.

Q We take the west and the east side of Albuquerque on a percentage basis the growth has been greater on the west side than on the east side, isn't that correct, over the last ten years?

A If I may qualify it, sir, with respect to previous years and with respect to relative figures in terms of percentages, that would be a correct statement.

Q Then it is your opinion, COG's opinion, that development on the west mesa will increase most significantly after 1980?

A Yes, sir.

MR. FLEMING: Thank you. I have nothing further.

THE COURT: You may redirect.

MR. DEVORKIN: Your Honor, I renew the application I made earlier this morning.

THE COURT: All right, we will have a short recess.

(Jury left the courtroom)

MR. DEVORKIN: I thought we were finished with cross examination and Mr. Lavinsky now walks up to me, your Honor, and tells me he is going to conduct a cross examination. I am in a state of confusion.

THE COURT: Go speak to the witness now.

(Recess)

(In open court - jury present)

MR. DEVORKIN: Mau I proceed, your Honor?

THE COURT: You may.

REDIRECT EXAMINATION

XX

BY MR. DEVORKIN:

Q Let me just give you this pointer, Mr. Pierce, and leave it up here.

Mr. Pierce, first of all, did you and I speak briefly over the recess we have just had?

A Yes, sir.

Q Let me place in front of you Defendants Exhibit EI for identification, the 1985 land use plan.

A Yes, sir.

Q Do you recall Mr. Arkin asking you a question about that page, page 3?

A Yes,sir.

Q Paragraph 2 in the second column?

A Yes, sir.

Q You read a portion of that paragraph?

A Yes, sir.

Q And your reply was that it was correct but out of context?

A Yes, sir.

Q The full paragraph reads, does it not --

THE COURT: Let the witness read it.

Q Would you read the full paragraph out loud?

A "The west side" --

MR. ARKIN: It is not in evidence, your Honor.

THE COURT: I will let him read it because his answer to you was that you were taking it out of context.

MR. ARKIN: How about putting the whole thing in evidence?

THE COURT: He doesn't want to.

Do you want to put it in?

MR. DEVORKIN: I will put the whole thing in evidence. I will offer it right now. I will put the whole document in.

MR. ARKIN: All right, the whole document.

THE COURT: Any objection?

MR. ARKIN: No objection.

(Government Exhibit 60 received in evidence)

Q Now, would you read out loud that entire paragraph so that everybody can hear it?

A Page 3, paragraph 2. "The west side including the south valley will start to develop extensively. Because of the lack of present development the west side can be expected to become the fastest growing area of the city on a percentage basis. Although the Northeast Heights will continue to have the most absolute growth."

Q Now, this document pertains only to Bernalillo County, is that correct?

A Yes, sir, with the exception to the reference of the community of Corrales which existed at that time in southern Sandoval County.

Q Would you take the pointer and point out on Government's Exhibit 1075-A where the town of Corrales is located?

A The community of Corrales is this area just to the east of the river and it is in the northern portion of the county of Bernalillo and in the southern portion of Sandoval County. So there is a community called Baja Corrales in the northern part of Bernalillo County and what is now the municipality of Corrales is in southern Sandoval County.

Q Is it east or west of the river?

A I am sorry, it is to the west of the river.

THE COURT: In order to prevent Mr. Arkin asking on recross examination, would you point out where Rio Rancho is against that?

MR. ARKIN: Thank you.

THE WITNESS: The developed portion of the community of Rio Rancho is in this area.

THE COURT: How many miles would it be from the Corrales area you have just indicated?

THE WITNESS: Approximately one mile.

THE COURT: All right, thank you. Go ahead.

BY MR. DEVORKIN:

Q The south valley is where?

A The south valley of Albuquerque is this area -- again I will get my directions right this time -- west of the Rio Grande extending throughout this area. It also includes the smaller developed portion east of the Rio Grande up to the municipal limits, which are approximately in this configuration (indicating), south of the airport and moving north toward the center of the city of Albuquerque and across the river, so this entire area is called the south valley.

Q How do you define the term "the west side" as used in Government Exhibit 60?

A Primarily the area which is east of the escarpment, which can be seen on this photograph, volcanic escarpment, which tends to disappear in the northern part as the slope becomes more gradual. It is still east in the area of Paradise Hills.

The west side that was considered at that time was primarily throughout this area west of the river and northward along the area east of the escarpment.

(Continued on next page.)

THE COURT: How far north?

THE WITNESS: All the way north to the Bernalillo County line, which is approximately up here (indicating).

Q It is the southern boundary of Rio Rancho, is it not?

A The southern boundary of Rio Rancho, yes, sir, right here (indicating).

Q Just remain at the mosaic for a moment, Mr. Pierce.

Is it fair to say when an area has very little population, when there is an increase in population the percentage of population increases very rapidly?

MR. FLEMING: Objection.

MR. ARKIN: Objection.

THE COURT: Overruled.

Didn't you expect that question, Mr. Fleming?

MR. FLEMING: I think it is self-answering. I think it is rhetorical, that's why I objected.

THE COURT: I don't think so.

Q Is that a fair statement?

A Yes, we are dealing with relative magnitudes.

Q Confining ourselves to the city of Albuquerque and Bernalillo County, first of all, is there an area of the city of Albuquerque known as the northwest?

A Northwest would be from approximately the center, which has been defined as the railroad tracks -- I'm sorry, Central Avenue and the railroad tracks, so the northwest quadrant is in this area (indicating).

Q That is an area that overlaps the Rio Grande River?

A Yes.

MR. ARKIN: Mr. Devorkin, could you not stand between us and the witnesses?

MR. DEVORKIN: Certainly. I am sorry.

Q That is an area that overlaps the Rio Grande River?

A It is anything that is northwest of that point, Central Avenue and the railroad tracks.

Q And that is still in Bernalillo County, is that correct?

A Yes, sir.

Q You may step up to the witness stand for a moment.

THE COURT: Let me get this straight.

Sit down, Mr. Pierce.

You keep saying Bernalillo County as though you are drawing a line and what happens on one side isn't going to happen on the other.

MR. DEVORKIN: No. I just want to get our definitions straight, your Honor, that's all.

THE COURT: All right.

Q So when we talk about northwest, referring to Albuquerque or the urban area of Albuquerque, it is the area within Bernalillo County, correct? And if we are talking about northwest referring to the urbanizing area, we are talking about the area including that outside of Bernalillo County?

A Those would be the definitions that I would use, yes, sir.

Q Do you recall Mr. Arkin I think it was about the second from the last question he asked you whether it would be a reasonable statement to make in 1965 that Albuquerque was growing to the northwest?

A Yes.

MR. ARKIN: I didn't use any particular time or date, I used years, if your Honor please.

THE COURT: You said ten years would be reasonable to predict growth to the northwest. That's what your question was.

That was the answer you elicited from your question.

MR. ARKIN: Yes.

Q In 1965, would it have been a reasonable statement to make that the only direction the city of Albuquerque could grow was the northwest?

A No, sir.

Q Would it have been a reasonable statement to make that the only direction the urban area of Albuquerque could grow would be the northwest?

A No, sir.

Q Would it have been a reasonable statement to make that the only area of the urbanizing area of Albuquerque could grow would be the northwest; the only direction?

A The only direction within the urbanizing area, no, sir.

Q Yesterday I believe Mr. Arkin asked you about bridge traffic over the Rio Grande River.

Do you recall that?

A Yes, sir.

Q You testified, I believe, that the traffic was increasing.

Do you recall that?

A Yes, sir.

Q Actually, there are three crossings over the Rio Grande, are there not? There is one up at Corrales?

A Yes, sir.

Q There is one at I40 and then there is one in the southwest going to the southwest part of the city?

A There are three in the south valley area.

Q Okay.

And taking this middle crossing in the south valley area, I40 would be to the north and then the middle would be, the next one down --

A Yes, sir.

Q Isn't it a fact that the traffic flow over that middle crossing is about two and a half times the traffic flow across the Corrales crossing?

A I could not testify to that without referring to the maps which we have presented to you which would give the details of the traffic flow.

Q Just a minute.

(Pause.)

MR. DEVORKIN: Mark this Government's Exhibit 1107.

XXX (Government's Exhibit No. 1107 marked for identification.)

Q Referring you to Government's Exhibit 1107, which is what (handing)?

A This is our 1974 traffic flow map which we produce on an annual basis showing the average daily traffic on all of the major arterials within the urban area.

Q And referring you to the middle crossing that I pointed out on the mosaic and to the Corrales crossing, does that refresh your recollection about --

THE COURT: The middle crossing, you mean I40?

MR. DEVORKIN: I mean the one below I40, your Honor.

A The one immediately to the south of I40 is Central Avenue.

Q Is it not a fact that the traffic flow over that crossing is about two and a half times the traffic flow over the Corrales crossing?

A Yes, sir. Our estimates of the Corrales crossing are 10,500 vehicle movements a day, at the Central Avenue crossing, 34,000, approximately three times.

Q You were also asked yesterday by Mr. Arkin about some plans for a new airport in the west mesa area, correct?

A Yes, sir.

Q What kind of an airport is that proposal for?

A Its initial phase -- it is defined in five different phases. Its initial phase and what we are planning and beginning to work on the development project now is a reliever facility for the Albuquerque International

Airport to provide for and accommodate general aviation type aircraft and general aviation type flying.

Q That won't be passenger commercial aircraft?

A No, sir. It is not anticipated that there will be any air carrier operations.

Q Those are plans for sometime in the future, is that correct?

A We have both plans for immediate and staged development within the foreseeable future, 10 or 20 years, and also plans for contingency sometime in the distant future if additional air carrier facilities should ever be needed in the area.

Q And that property you are talking about is on the Atrisco land grant?

A For the initial phases as I described, there are areas north which we are considering for the long range possible contingencies.

Q On Atrisco, what was formally Atrisco, is that correct?

A Yes, sir, for the first three phases of development, the current location is on the northern portion of the old Atrisco land grant.

Q In fact, in planning circles in Albuquerque, there is some doubt whether that airport is ever going to be built, isn't there?

MR. ARKIN: Objection.

THE COURT: I will let him give his opinion. He has been asked his opinion yesterday and today by both sides.

A We are moving in a very positive direction under very positive policy set by the local elected officials to proceed with the development of such a facility and seek assistance from the Federal Aviation Administration to do so.

Q But what I mean, though, the airport hasn't been given final approval, has it?

THE COURT: Oh, of course not.

A No, sir.

THE COURT: He has negated your inference, though, that it is a dream.

Q Mr. Arkin, I believe, also asked you yesterday about what the Albuquerque transportation planning area was.

Do you recall that?

A Yes.

Q And that area includes all of Bernalillo County and southern Sandoval County, correct?

A Yes, sir.

Q That is for all transportation planning contingencies, correct?

A It is our immediate systems planning area, yes, sir.

Q It is a fact, is it not, that Rio Rancho is outside the federal aid urban boundary?

A Yes, sir, with respect to federal aid -- it requires definition -- for capital, federal assistance with capital improvements.

THE COURT: What does that mean?

THE WITNESS: Bridges, streets, system improvements, street improvements that are on the identified federal aid system in the area.

THE COURT: Does that mean you can guild a highway?

THE WITNESS: Yes, sir. We can use available resources for purposes of new construction, of system improvements, expansions to improve capacity.

THE COURT: Would that include the Rio area, Rio Rancho area?

THE WITNESS: No, sir. This was the question within Sandoval County. There are no capital improvements in the urban systems funds category available. There are other federal aid for the counties outside of Bernalillo which come through the state highway department.

THE COURT: All right.

(Continued on next page.)

Q And it is a fact, is it not, that Rio Rancho is outside the 1970 census urbanized area boundary? Is that correct?

A The 1970 census --

Q Urbanized area boundary.

A Yes, sir. But that requires a definition of the standard metropolitan statistical area, which at that point in time was confined to Bernalillo County.

Q And it is a fact, is it not, that Rio Rancho is outside COG's 1990 urban boundary?

A Only for the purposes of definition related to federal highway administration requirements and also the requirements set forth by the urban mass transportation administration, again, in the area of capital improvement resource availability.

Q And do you recall Mr. Arkin asking you yesterday about relative soil conditions in the area of Albuquerque and its environs?

A Yes, sir.

Q And you gave some testimony about what you had heard or believed about the relative soil conditions?

A Yes, sir.

Q Are you aware that a number of types of -- withdrawn.

Are you aware that a number of areas of Rio Rancho have soil types which are subject to moderate or severe water erosion and wind erosion?

A Yes, sir. Those are predominantly in the natural arroyos.

Q But they are located throughout the property, are they not?

MR. ARKIN: Objection. It is a leading and suggestive question.

THE COURT: Sustained.

Q Are you aware where the areas, specifically where the areas of moderate or severe water and wind erosion are in Rio Rancho?

A Yes, sir.

Q It is partly a function of the kind of soil there, isn't it?

A It's the function of natural water courses which have been formed over the eons?

Q How large are most of those arroyos.

THE COURT: Where?

Q On Rio Rancho property?

A It's a very difficult question to answer, because they vary extensively in both depth and width in terms of the magnitude of run-off experience which they have had.

Q Give us a range.

A Well, they can vary anywhere from a few feet in depth and a few feet in width to depths, relative depths of several hundred -- well, 50 to 100 feet, in that range, to several hundred feet wide.

Q Using Government Exhibit 1075, so we are all clear, again, on definitions what areas we are talking about, would you point out in outline form the boundaries of APJ1.

A We have established on the west a relatively artificial straight line which does approximate the western escarpment of the mesa which falls off into the Rio Puerco over in this area, so that line is a straight line that we have defined here (indicating).

Q Just for the record, that is about six inches from the left side of that exhibit, correct?

A The Rio Puerco?

Q The line you just outlined?

A No, the line we talked about APJ1 is this escarpment line.

Q That is what I am talking about. It is about six inches from the end of the mosaic.

A Yes.

MR. ARKIN: Which way are you facing it?

Q Six inches from the left edge as you face it, correct, about?

A Six inches to the right of the left edge facing the display, yes, sir.

Q Thank you.

Where are the other boundaries?

A They approximate and generally follow the lines created by the Siandias and the Monsano Mountains.

Q That is on the --

A That is the extreme east. The reason for that establishment is because of the constraints which are offered by the rather abrupt change in topography described by the mountains.

Q Where is the north boundary?

A The north boundary is all the way to the north of the town of Bernalillo, which is situated in the northern most area, so that line is approximately at this level (indicating).

Q How far south does APJ1 run?

A It goes through the Isleta Indian reservation on the south of this display all the way into all of east Valencia County, to the extreme edge of Valencia County, which is south of the city of Belen.

Q It includes the city of Belen?

A Yes, sir.

Q About how many miles south off of that mosaic does APJ1 run?

A Approximately thirty-two miles.

Q And all of that is the area you defined for Mr. Arkin as having the potential for urbanization?

A Yes, sir.

Q By the way, there are substantial developments to the south of APJ1 off of that exhibit, are there not?

A Yes, sir.

Q There is one about 250,000, isn't it, or 200,000 acres, approximately?

A Could you define development, please?

Q Without mentioning names, there is a subdivision near Belen, is there not, of approximately that size?

MR. ARKIN: Your Honor, may we have direct questions and not leading and suggestive questions?

THE COURT: Yes. Is there?

Q Is there a subdivision near Belen, without mentioning names, of approximately that size?

A Approximately what size again?

Q 200,000 acres.

A There is a subdivision and I believe their land holdings would approximate that amount of acreage, yes, sir.

Q I believe yesterday you defined, when you were talking about that entire area of APJ1, you talked about it as the area of potential urbanization, correct?

A Yes.

Q That does not mean it will or will not urbanize, correct?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q The time period for potential urbanization is how long?

A We have defined for the U.S. Department of Housing and Urban Development and other federal agencies that area which we anticipate or in which there will be urban development within the next twenty years, urbanizing area.

Q And the subdivision I just mentioned, I just went over that has approximately 200,000 acres, is that within APJ No. 1?

A Yes, sir.

Q When you say potential for urbanization, do you mean that the entire area will be filled up with homes and commercial development?

THE COURT: Why don't you ask the witness what he means by it?

This is a direct examination.

Q What do you mean by potential urbanization, Mr. Pierce?

A The area in which there will be substantial urban kinds of development, meaning areas for relatively high density to relative low density, low density areas maintaining the characteristics of a rural or semi-rural character for the development of homes, residents where people can, in fact, maintain their rural lifestyle.

Q And yesterday Mr. Arkin asked you about the physical constraints on the urbanizing area, correct?

A I believe his question was related to what we have referred to as the urban area within Bernalillo County around the city of Albuquerque.

Q You talked about constraints of the Siandia Mountains to the east, correct?

A Yes, sir.

Q From where Albuquerque itself is in terms of its developed area in 1975 on Government Exhibit 1075, there is considerable land between that point and those constraints?

MR. ARKIN: Objection. He has testified.

THE COURT: Turn that into a question, Mr. Devorkin.

Q Is there considerable land between that point and the constraint?

MR. ARKIN: Objection to the word "considerable".

THE COURT: He can define it after he says yes or no.

A Can you rephrase the question, please? I don't understand the boundaries we are dealing with.

THE COURT: He is talking about the northeast quadrant, which I gather the witness has already limited to the 6,000 acres plus the north Albuquerque Acres.

Q I want to take the outermost boundary of where the developed portion of Albuquerque is, Mr. Pierce, compared to the Siandia Mountains.

There is considerable land between those two points, is there not?

THE COURT: 6,000 acres.

Q Is that correct?

A Yes, sir.

THE COURT: 6,000 acres, isn't it?

THE WITNESS: Yes, sir. That was our estimate.

THE COURT: We got that yesterday, Mr. Devorkin.

Q There is also considerable land inside of Albuquerque exclusive of the 6,000 acres which can be developed, correct?

MR. ARKIN: Objection.

THE COURT: Ask direct questions, please.

You are going to get objections to form. Every time you do that I am going to sustain it.

Q Taking the area within Albuquerque in the northeast of Albuquerque, exclusive of the 6,000 acres you talked about, is there vacant land there?

MR. ARKIN: May we have a definition of Albuquerque.

Q The city limits.

A Yes, sir, two different types.

Q What types?

A Individual lots where utilities are available with paved streets. Some previously platted or subdivided areas which are currently improved and some not improved.

Q Is there also land between the outermost developed portion of Albuquerque in the southerwest and physical constraints on the area?

A In the southwest quadrant?

Q Yes.

A There is land available in the area that we previously described as the south valley and west of that the constraints which exist are some physical in terms of the kinds of development which presently exists in that area and the availability of utilities.

The ability to extend utilities or provide utilities in the area.

Q I want to talk about the constraints Mr. Arkin asked you about yesterday which were the physical constraints on the area.

MR. ARKIN: Physical and legal, if your Honor please, my question was both.

THE COURT: Yes.

Q Let's back up a second.

You said you thought Mr. Arkin was talking about the urban area of Albuquerque, correct?

A Yes, sir.

Q Let me show you page 4173 of the transcript, line 8 and ask you whether or not that refreshes your recollection about whether Mr. Arkin was talking about the urban area or the urbanizing area.

A The specific reference --

THE COURT: Show him 4173.

Q Showing you 4172 --

THE COURT: And 4173.

Q And 4173 --

THE COURT: He is talking about the urbanizing area.

Q Is that correct, specifically lines 12 through 14?

A That's correct. It depends on which time period we are discussing. We have defined the urbanizing area several times as APJ1.

Q Mr. Arkin was asking you about the urbanizing area as defined on pages 4172 and 4173, correct?

A The urbanizing area, the Albuquerque urbanizing area, which we previously identified as the greater Albuquerque area.

Q From above Bernalillo to south of the city of Milan?

A That should be Belen.

Q That is the urbanizing area we are talking about?

A Yes, sir.

Q When Mr. Arkin was asking you questions yesterday, correct? Is that correct?

A Again, we have the definitional problem where we are dealing with the city of Albuquerque and the greater Albuquerque area within Bernalillo County and the urbanizing area which we defined as APJ1.

Q Mr. Pierce, I am just asking you about the way Mr. Arkin defined it yesterday.

MR. ARKIN: Excuse me, if your Honor please, I didn't fine anything. The witness did.

THE COURT: You asked for the definition and your questions were bound by that. It is the Albuquerque urbanizing area.

MR. ARKIN: Yes, your Honor.

Q Which yesterday in response to Mr. Arkin's questions you defined as extending from above Bernalillo to south of the city of Belen, correct?

A Yes, sir.

Q Thereafter he proceeded to ask you questions about the natural and legal constraints on that urbanizing area, correct?

A It was my interpretation that we were dealing with the contraints of the urban area because the reference was made to the Isleta reservation.

THE COURT: Let's start all over again then, Mr. Pierce.

On page 4173 Mr. Arkin said, "Let's take Albuquerque as an urbanizing area."

I have gathered that an urbanizing area is the large area, APJ1 that you defined for us, isn't that correct?

THE WITNESS: Yes, sir.

THE COURT: Now, we are all agreed on that. You are not going to change that definition.

Albuquerque urbanizing area is the area that you have just defined which you say goes 32 miles south of the mosaic that is there and you have indicated the other portion.

Put your questions based on that definition.

Q The physical constraints that we were talking about yesterday don't apply to that entire area, do they?

A No, sir.

Q If you are confining yourself to the urbanizing area of Bernalillo County and southern Sandoval County and not farther south --

THE COURT: You cannot do that. Urbanizing area has a definition.

MR. DEVORKIN: All right, your Honor, I will withdraw that question.

Q Referring to Bernalillo County and southern Sandoval County only, all right, there are mountains to the east, correct?

A Yes, sir.

Q And you testified about the amount of land you believe exists exclusive of north Albuquerque Acres between the outermost point of Albuquerque's development and those mountains, correct?

A Yes, sir.

Q Now, in the southwest of that area, what physical constraints are there on the land itself such as mountains or reserve lands, if any?

MR. ARKIN: If your Honor please --

THE COURT: He means physical or legal restraints. Restraints on areas for population growth subdivided land?

THE WITNESS: May I use the chart, please?

THE COURT: Sure, go ahead.

A Are we speaki of the southwest quadrant?

Q Yes, sir.

A That we have defined.

Q Yes, sir.

A That is the southwest quadrant of the Albuquerque urban area, which is this portion of Bernalillo County.

So if we are directing our attention to this area --

Q Mr. Pierce, will you just stand on the other side so all the jurors can see you. Thank you.

A There are -- this is the area I was referring to by saying that there are some physical constraints in terms of the ability to provide public utilities in this area in terms of priority, in terms of available resources.

There are other constraints which are a matter of value judgments on the part of people who would choose to live in this area because --

Q I am not talking about those restraints. I am talking about physical restraints which actually prevent development of that land such as the mountains in the northeast.

THE COURT: Or legal restraints such as government lands or Indian reservation.

A No, sir, there are no legal restraints in terms of land ownership. This is predominantly privately owned land all the way down to the Indian reservation.

THE COURT: How far is it from there to the Indian reservation is what we are trying to find out.

THE WITNESS: Well, it would only be a matter of approximately four miles below this point (indicating) to the Isleta reservation.

THE COURT: So you have four miles to the south and how much open land or vacant land would you say exists from the indicated developed portion on that map to the west?

In other words, you say there is a natural line there that prevents going to the west, is there not?

Way over there.

THE WITNES: This is an escarpment, yes, sir.

THE COURT: Is the land east of that

available for development with that physical geographic limitation?

THE WITNESS: Yes, sir, it could be developed.

THE COURT: It could be developed the same as the area north where Rio Rancho is developed?

THE WITNESS: Yes, sir.

THE COURT: How much is the distance?

THE WITNESS: Well, I am assuming that --

THE COURT: Let's take the developed area. You can tell a developed area on that map roughly?

THE WITNESS: About two miles wide.

THE COURT: How much in the undeveloped?

THE WITNESS: It would look like about another six miles over to this escarpment.

THE COURT: So you have six miles to the west of the developed area of the southwest portion available and then how much of that north and south would that be until you hit the Indian reservation?

THE WITNESS: Oh, I would say another six miles.

THE COURT: It would be six by six, thirty-six miles, thirty-six square miles?

THE WITNESS: A rough approximation, yes, sir.

THE COURT: All right.

Q What about the area due west of the center of the city of Albuquerque in terms of the same questions Judge Metzner asked you?

A Well --

THE COURT: You cannot use due west. The witness has indicated quadrants and that seems to be an easier way to describe the area because due west will be in the southwest quadrant and it will be in the northwest quadrant. Let's use the quadrants which have been the basis of the witness' testimony.

A The major portion of what has been terms the Atrisco land grant is in the northwest quadrant and extends slightly into the southwest quadrant and extends as far north to approximately this area (indicating).

This was the central land grand known as Atrisco.

Q That is vacant land for the most part?

A Yes, sir.

MR. ARKIN: Objection, your Honor.

THE COURT: Is that available for development?

THE WITNESS: Yes, sir, as we indicated yesterday, this was the area where there had been in 1968 to about 1972 considerable legal constraints because of the land ownership questions, which had been resolved by the exchange of titles to individual parcels for exchange in stock in the Westland Development Company whereas the internal land area questions were dissolved.

THE COURT: How much area does that take up?

Can you give us the square miles, an approximation?

THE WITNESS: The total area is six by eight, perhaps forty-eight square miles.

THE COURT: All right.

Now, do you want to go north of that?

Q Yes, let's take the area north of that --

THE COURT: North of the Westland Company's land.

Q Between that and the northern border of Bernalillo County.

A That is an area which was originally another old Spanish land grant called the Alameda Grant. Again the center of activities along the river created the town of Alameda, which is right in this area (indicating).

That, as far as I recall the history of it, perhaps is another forty square miles. In a practical sense it became what was known as checkerboard land.

THE COURT: What was that?

A That was the result of the railroad properties and the way the laws were formed a number of years ago with the railroad's development and there was a checkerboard land. The railroads were given alternate square miles of land. So this became part of the checkerboard land and it was subsequently readjusted so that the federal lands were consolidated to the west and the privately owned lands were consolidated to the east of that area and somewhat of a valley on top of the mesa. It is not much of a valley but a slight depression.

So this land up in here is currently privately owned by a family.

This land to the west is in public ownership having been transferred through several means from the federal government, the Bureau of Land Management, to the city of Albuquerque.

THE COURT: Now, you go east of the land owned by the private family. How much land lies between that point and the Ri Grande River which would be availab for development.

Isn't that where Paradise Hills is?

THE WITNESS: Paradise Hills is here, yes, sir, and there are several other smaller private developments along this corridor.

There is a new one which is now shown on this display which is called the Taylor Ranch Development.

THE COURT: Taylor Ranch we have heard of.

THE WITNESS: Okay.

THE COURT: All I asked you to do was to approximate the area that's east of the privately owned land in that north quadrant that would be available for the private development, including those that exist now.

THE WITNESS: Well, I would say we are dealing with an average width of about perhaps three to three and a half miles north and south and ten miles.

THE COURT: The lower part is in the southwest quadrant, isn't it?

THE WITNESS: Yes, sir.

THE COURT: Let's forget that. I am talking about the northwest quadrant now.

THE WITNESS: The entire -- well, I am dealing with the northwest quadrant including a portion of Atrisco below the escarpment here and I would again say it is approximately ten miles by three or three and a half.

THE COURT: That would be 30 miles?

THE WITNESS: 30 or 35 square miles.

Q Mr. Pierce, would you resume the witness stand.

On the portions of that mosaic where you can see the outermost edges of development of the city of Albuquerque, is there land within that outermost edge that is vacant and available for development?

A In which quadrant, sir?

Q In any of the quadrants where there is development. In other words, the city of Albuquerque has an outermost edge of development, correct, is that right? We don't get your answers unless you say yes or no.

A I am considering the question. The city of Albuquerque does have outermost limits, municipal limits.

Q I am not talking about the legal limits. I am talking about the edge of development of the city. There is a border you can trace out where you can see the houses, actually Albuquerque has gone out that far?

A That's correct.

Q It is a jagged border, correct?

A That's correct.

Q That is not a legal border?

A Yes, sir.

Q Within that border is there also land that is vacant that can be developed?

A Yes, sir.

Q Of course, ten years ago that jagged border was smaller than it is now?

A Yes, sir.

MR. ARKIN: Objection.

THE COURT: Sustained. You asked if there is land available. Are there ten lots, a million lots, just saying land available does not avail you of anything, Mr. Devorkin.

Q There are portions of Albuquerque within its edge of development that have not been developed yet, is that correct?

A Yes, sir.

Q Approximately how many acres do you think there are within that area, if you know? If you don't know, just say so.

A No, sir, I do not recall.

Q Now, in that southwest quadrant there are private developments called West Gate and Snow Vista, is that correct?

A Yes, sir.

Q They were started in about 1960?

A Yes, sir, that's approximately right.

Q They are on part of the old Atrisco grant property, are they not?

A Yes, sir.

Q Are you aware that the gentleman who sold the original Rio Rancho land to AMREP is the developer of that property?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Westland Corporation is developing some industrial land on their own property, isn't it?

MR. ARKIN: Objection. Might we have direct questions.

THE COURT: Yes, come on.

Q Is there development by Westland Corporation on its property?

A Yes, sir.

Q What kind of development is that now?

A They have an industrial park and some residential activity at the present time.

Q How would you characterize the industrial park in terms of its attractiveness?

MR. FLEMING: In relation to what?

Q In relation to other industrial areas of the city. Withdrawn.

In relation to the industrial park that is up at Rio Rancho, how wouldyou compare the two?

A Well, I think the Westland Industrial Park is currently at a greater state of advancement than the one that exists at Rio Rancho. Those are relative terms again in terms of time and magnitude of development.

Q How would you compare their access to good transportation facilities?

A The Westland Industrial Park, if I may once again, is located within this area here, which is immediately adjacent to the interchange of I40 at Coors Road.

They of course have rail access from this area just across the river and of course it is in proximity to the Albuquerque International Airport. Access is provided through the interstate system to that facility.

Q Do you recall Mr. Arkin asking you yesterday about the difficulty of developing north Albuquerque Acres?

A Yes, sir.

Q In fact, in the last few years has there been some residential development on that property?

A Yes, sir.

Q That is by Mr. Dale Belema?

A I am not familiar with the developer or developers because there have been a number of individual developments.

Q On north Albuquerque Acres property?

A Yes, sir.

Q Which was the property you were excluding from your 6,000 acre calculation?

A Yes, sir.

Q You also mentioned yesterday in response to Mr. Arkin's questions I believe the Siandia Indian reservation, correct?

A Yes, sir.

Q Is there some private development on that property now?

A Some, yes, sir.

Q Mr. Arkin asked you yesterday, do you recall, various questions about projections of populations for different portions of the APJ and he introduced into evidence Defendants' Exhibits EF and EG, do you recall that?

A Yes, sir.

Q Showing you Governme[illegible]'s Exhibit 59 in evidence --

MR. DEVORKIN: Excuse me, your Honor, may I have a moment?

(Pause.)

Q Would you turn to page Roman numeral III-2. That is a 1970 population distribution for APJ-1, correct?

A A graphic distribution, yes, sir.

Q That shows in 1970 about 92 per cent of the population in Bernalillo County, about 2 per cent in southern Sandoval County and about 6 per cent south of Bernalillo

County, correct?

A Yes, sir.

Q Do you recall answering Mr. Arkin's questions about Exhibit EG in evidence, which is the projections to the year 2000?

A Yes, sir.

Q Let me place that in front of you. Mr. Arkin asked you about page 8, did he not?

A Yes, sir.

Q That was the only page he asked you about, was it not?

A To the best of my recollection, that's correct.

Q He asked you about the graphs on those pages, correct?

A Yes, sir.

Q Now, page 7 has some other projections, doesn't it?

A Yes, sir.

Q You weren't asked about those yesterday, were you?

A Not as I recall.

Q Now, the graphs on page 7, specificially figure 3, reproduces the population distribution for 1970 that was in Government's Exhibit 59, correct?

A Which was Government's Exhibit 59?

Q The one I just referred you to before.

A Yes, sir, correct.

Q That is figure 3, right?

Figure 4 shows a projection for the year 2000 if present distribution patterns remain the same, is that correct?

A Figure 4 does that, yes.

Q Figure 5, which is on page 8, which Mr. Arkin asked you about, was if present distribution patterns changed, correct?

A That's correct.

Q In fact, a paragraph above figures 3 and 4 is an explanation of those figures?

A That's correct.

MR. ARKIN: If your Honor please, again I ask that there be direct questions. Mr. Devorkin's words, I want to object.

THE COURT: Sustained.

MR. DEVORKIN: May I read the paragraph above those figures, your Honor?

THE COURT: Yes.

MR. DEVORKIN: Let me show the jury page 7, two figures, 3 and 4. Figure 3 is labeled 1970 distribution of population.

Figure 4 is labeled, 2000 present distribution patterns.

I am reading from the paragraph: In 1970 approximately 92 per cent of the population of APJ-1 resided within the Bernalillo County portion. About 2 per cent in the southern Sandoval County portion and about 6 per cent resided within the eastern Valencia portion. The future distribution within the APJ depends on both public and private efforts and to a large extent the influence of policy and efforts within the Albuquerque metropolitan area.

Should efforts to attract future economic development be concentrated in the central city area, the remainder of the APJ would not experience a more balanced development. This would suggest that the distribution of population of APJ-1 would remain similar to that in 1970. As an example the base line forecast distributed on the basis of 1970 would exhibit density patterns in the year 2000 as showin in figure 4.

Q Figure 4 lists a population of 14,100 for southern Sandoval County, correct?

A That's correct, yes.

Q That includes Rio Rancho, correct?

A Yes, sir.

Q Now, turning to page -- withdrawn.

By the way, in 1973, which was three years before the document you have in your hands was published, you were predicting only a population of about 500,000 in the year 2000 for APJ-1, is that correct?

A We were projecting that, yes, sir.

Q The actual population of APJ-1 at the time of that projection was about 400,000 was it not?

THE COURT: Wait, you are talking about 1973?

MR. DEVORKIN: 1973.

A That would be a reasonable estimate, yes, sir.

Q That 500,000 figure projection that you were making in 1973, was that lower than earlier projections?

A Considerably lower, yes, sir.

Q By the way, previous to coming to New York, did you have discussions about these documents with Mr. Arkin or any other attorneys for AMREP?

A Yes, sir, copies of all these documents were provided.

Q How long did those discussions last?

A Probably an aggregate of four hours.

Q Did you point out page 7 to Mr. Arkin or his representative?

A I think we discussed a number of points of interest in all of these documents. I don't recall specifically, however.

Q Turning to page 8, figure 5 is the one you were asked about yesterday, right?

A That's correct.

Q Are those projections, do they have some assumptions behind them?

A Yes, sir.

Q Are those assumptions set out anywhere on page 8?

A There are references to them.

Q Comparing figure 5 to -- figure 5 is a projection for the year 2000, correct, another projection for the year 2000?

A It illustrates a possible distribution of the projected population.

MR. DEVORKIN: May I read from the top of page 8, your Honor? Let me show the jury page 8.

Figure 5 says "more even distribution is 77,000 southern Sandoval County."

Reading from the page: If, however, a more evenly distributed and balanced development is encouraged and if efforts to achieve this are successful, a distribution pattern and resulting population densities might emerge as shown in figure 5. However, it should be pointed out that an evenly distributed population might be extremely difficult to achieve by the year 2000. An extreme example is provided in figure 6 in which zero growth for the metropolitan area of Bernalillo County is assumed."

Q Does that mean no growth whatsoever in the entire county?

A That's correct.

MR. DEVORKIN: "If the projected increases in population for APJ-1 were experienced by the adjacent counties" --

Q I take it not by Bernalillo County at all, correct?

A That's correct.

MR. DEVORKIN: "The proportion in the greater Albuquerque would shift from 92 per cent to around 52 per cent. It should be noted that such a population redistribution does not necessarily imply a proportionate shift in the economic or employment basis."

Q These are population projections, is that correct?

A That's correct.

Q And they assume a number of different variables, is that correct?

A That's correct.

Q Would it be fair to say that it would be more difficult -- withdrawn.

Would it be more or less difficult to estimate the future distribution of population within APJ-1 as opposed to the future population of the entire area of APJ-1? Do you understand my question?

A It is always more difficult to project or estimate populations in smaller areas than larger areas. That is true of the United States as well as states, as well as subareas of the states or down to very small areas within a city.

Q That is because there are a number of different interactions between those small areas, is that correct?

MR. ARKIN: Again, your Honor --

THE COURT: Why don't you ask the witness.

(Continued on next page.)

Q What are the reasons that it is more difficult, Mr. Pierce?

(Pause.)

Q Did you hear my question?

A No, I did not.

Q What are the reasons that it is more difficult to predict a distribution in APJ-1 than an entire area?

A Well, for example, the national level, it's relatively easy to use techniques such as the cohort survival technique, in migration into the United States, life span, the effect of population growth, the life span of individuals and we are not influenced by the interacting forces that exist between states or in a smaller area between the public and private sector activities in terms of policies, in terms of investments that occur, all of which tend to influence the special distribution of future growth.

Q Would the projections which Mr. Arkin referred to yesterday in figure 5 from your document depend on any of the efforts of local officials in the different local governments?

A Absolutely. They are heavily influenced by the public sector decision making process, as well as the private sector decisions.

Q And in the case of the same distribution pattern versus a different distribution pattern, that would take -- would that take an effort to change by the local officials to make a change?

MR. ARKIN: I don't understand the question.

THE COURT: Neither do I.

Q Would the local officials have to make a change to change that distribution pattern?

MR. ARKIN: Again I object.

THE COURT: Sustained.

Q What, if anything, would the local officials have to do in order to achieve that different distribution pattern?

A In setting forth policy by local elected officials or collective body, these policies are frequently translated into local ordinances, such as zoning subdivision regulations, which define not only the type of development which may occur in any particular area of any particular parts of the property but also the relative location of industrial, commercial and residential activities. So they can be influenced in terms of not only magnitude but their special distribution.

Q But to achieve the distribution in figure 5, would it require an effort by local officials?

A To some degree. It would also require considerable effort, which is being made, as a matter of fact, by the private sector.

Q And does that achievement depend, in part, on the growth policies of the city of Albuquerque?

A Yes, sir.

Q Are you familiar with the growth policies of the city of Albuquerque?

A Yes, sir.

Q And to the best of your recollection, what, if anything, is the city of Albuquerque doing to encourage urbanization within its city limits?

A I assume you are referring to the in fill development policy, which has been translated by law to the extension of standby charges for utilities, which merely means that unimproved lots or the owners of unimproved lots are paying for utilities services if they are available to those lots whether or not there are improvements.

Q Are there areas of the city of Albuquerque in which the city of Albuquerque has set aside to encourage development in?

A I'm not sure I can answer that question in those terms.

MR. DEVORKIN: Let me mark this as Government's Exhibit 1108.

XXX (Government's Exhibit No. 1108 marked for identification.)

Q Let me direct your attention to page 2 -- withdrawn.

Let me show you Government's Exhibit 1108 for identification, and ask you if you recognize it (handing).

A Yes, sir.

Q What is it?

A It's entitled "the metropolitan areas and urban centers plan."

Another identification for it would be the comprehensive plan developed for the Albuquerque urban area.

This is the most modern version of what you have been referring to as the 1985 land use plan done, well, some 15 years ago.

Q And that is for Albuquerque and Bernalillo County?

A The urban area of Bernalillo County, yes, sir.

Q Directing your attention to page 2 of Government's Exhibit 1108, does that refresh your recollection about whether there are areas --

MR. ARKIN: Is that Government's Exhibit 1108 for identification?

MR. DEVORKIN: Yes.

MR. ARKIN: It is not in evidence?

THE COURT: That's right.

Q Does that refresh your recollection whether there are areas within Albuquerque that the city of Albuquerque is trying to encourage development in?

A Yes, sir.

MR. FLEMING: I have no objection if his recollection has been exhausted, your Honor.

THE COURT: I will overrule the objection.

Q And your memory is refreshed on that now?

A Yes, sir.

Q What are the areas within the city of Albuquerque which the city is encouraging development in?

A This plan is a concept for the desirable arrangement of activities in the Albuquerque urban area in the future. It is based on a neighborhood-type satellite arrangement of a series of communities, neighborhoods, within the urban area.

Q And where are those areas that Albuquerque is encouraging that development in?

A There are essentially those centers conceptionalized for all of the four quadrants in the urban area.

Q That would include, in fact, the south and southeast quadrant, wouldn't it?

A The southeast quadrant?

Q Yes.

A Yes, but it's a very low priority.

Q And that would include the south valley, wouldn't it?

A It recognizes the south valley, yes, sir.

Q And the city is extending services in that area, is it not?

A That's correct.

Q And that includes the southwest quadrant, does it not?

A There are increased utilities being developed and being planned for the south valley area, which lies within the southwest quadrant.

Q And that includes land on the Atrisco grant, correct?

A Yes, in the northern or due west portion.

Q And thatincludes land on the Elena Gallegos grant, doesn't it?

A It includes the southern portion of the Elena

Gallegos grant, yes, sir.

Q I am placing in front of you Defendants' EF, which Mr. Arkin asked you about yesterday (handing).

Do you recall that?

A Yes, sir.

Q EF was published in 1975, correct?

A That's correct.

Q And page 16 has yet another projection to the year 2000 for population distribution within APJ-1, correct?

A That is a generalized graphic conceptionalization of the distribution and also reflects the possible percentages that we previously discussed as figure 5 in the socio-economic projections.

Q Which is EG.

Now, the projections in EF also assume a change in the present distribution pattern, do they not, listed on page 16, that is?

A Yes, sir.

Q And at that time, in May of 1975, assuming a change in the distribution pattern, you were predicting a possible population for southern Sandoval County of 60,000?

MR. ARKIN: I object.

May we ask the question what he projected?

THE COURT: Will you ask direct questions, please.

MR. DEVORKIN: May I read from this exhibit?

THE COURT: Objection sustained.

MR. DEVORKIN: May I read from this exhibit?

THE COURT: No. You can ask the witness a question.

Q What is the figure on page 16?

A If I may make a clarifying statement, we do not make predictions; we do make projections.

The projections on page 16 suggest that future years, about 20 year target date, we might expect about 76 per cent of the population to reside in the Albuquerqu area, approximately 11 per cent of the total population in APJ-1 to be in the southern Sandoval County area and approximately 13 per cent to be located in the southern portion of APJ-1, which includes the communities of Los Lunas, Belen and Rio Communties.

Q And does this distribution pattern assume a change from the present pattern or does it reflect the present pattern?

A It reflects the present pattern and assumes extension of utilities from their current locations where they are legally provided, and it also assumes thatthe choice alternatives available will be taken advantage of by people who choose to locate in the Albuquerque area or the urbanizing area as we have defined it.

Q Well, that's not the present -- that doesn't assume the present distribution pattern of APJ-1, does it?

A No, sir. This assumes a more even distribution throughout the area.

Q Similar to figure 5 on page 8 of Defendants' Exhibit EG, correct?

A Similar to that, yes.

Q I believe you testified yesterday that if everything turned out to be correct and figure 5 turns out to be true in the year 2000, that the Rio Rancho population would be about 50,000 in the year 2000, correct?

A Yes, sir, that was the figure used yesterday.

Q That is if all your assumptions turn out to be accurate, correct?

A Yes, sir.

Q By the way, are you aware of the maximum number of homes Rio Rancho has built in any one year?

A No, sir, I am not.

Q Do you ever have conversations or meetings with representatives of Rio Rancho?

A Yes, sir.

Q How frequently?

A At least every two months, because their representatives meet with our board of directors representing the associate membership.

Q To your knowledge, has a representative from Rio Rancho ever given you any projections for how many homes per year they expect to build or what their population will be in the future?

MR. ARKIN: Objection.

THE COURT: Overruled.

A We have received formally and we presented to you estimates from Rio Rancho of the current population and we collectively provided to the U.S. Bureau of Census an assumed population within the next few years that we projected out from those estimates.

Q My question is, has Rio Rancho or its representatives ever given you projections of how many homes per year they are going to build or what their future population will be?

A I am unable to say that they have or have not.

Q You don't recall any?

A No, sir.

Q Are you aware of how many single-family homes

Rio Rancho had occupied as of September 1, 1976?

A No, sir.

MR. DEVORKIN: Would you mark this Government's Exhibit 1109.

XXX (Government's Exhibit No. 1109 marked for identification.)

Q Let me show you Government's Exhibit 1109, and ask you if it refreshes your recollection about how many homes Rio Rancho had occupied as of September 1, 1976 (handing).

MR. ARKIN: Your Honor, he never said he didn't have any recollection; he said he didn't know.

MR. DEVORKIN: I think he said he was unaware.

THE COURT: If he is unaware, then he is unaware. You can't give him something.

Q Was there a time when you received from Rio Rancho some figures as to the amount of number of occupied homes on September 1, 1976?

A Yes, sir. And as I stated earlier, we had provided you with a copy of that.

Q The answer is yes, correct?

A Yes, sir.

Q And --

THE COURT: Do you remember what was in that document?

THE WITNESS: Their estimates of population.

THE COURT: Their estimates of population?

THE WITNESS: Yes, sir.

Q Current population, correct?

THE COURT: Do you remember what the figure was?

THE WITNESS: I prefer to refer to the document, but I think it was roughly 6,000 --

THE COURT: All right. If you need the document to help you, you may look at the document.

Q Does 1109 help you in remembering the population --

MR. ARKIN: Your Honor, the question should be, is 1109 the document?

Q What is 1109, Mr. Pierce?

THE COURT: I think you are wasting your time, Mr. Arkin.

Give it to him and let him read it.

A Well, this memorandum is --

Q Just read it to yourself.

A 6,400 --

Q No. Read it to yourself.

A I have read it.

Q Okay.

Does that refresh your recollection about the population of Rio Rancho as of September 1, 1976?

A Yes, sir.

Q And what is that population?

A 6,407.

Q Is that based upon figures given to you by Rio Rancho?

A Yes, sir.

Q And what is the number of occupied homes as of September 1, 1976?

A 1,695.

Q And that is based upon figures given to you by Rio Rancho?

A May I qualify this further?

Q Certainly.

A The number I gaveyou was in relationship to single-family households.

There are additional categories.

Q Let me see it.

THE COURT: What is the total?

MR. DEVORKIN: The total population --

THE COURT: No, not you; the witness.

Q What is the total population for Rio Rancho as of September 1, 1976?

A The total population, 6,407.

THE COURT: All right. The total number of dwelling units, whether they are single-family, multi-family, condominiums, whatever you want to call them.

THE WITNESS: Okay.

Approximately 2,000, your Honor.

THE COURT: Thank you.

Q And how many are single-family homes?

A 1,695.

Q Would I be correct in saying that that's about 3.3 persons per single-family home, Mr. Pierce?

THE COURT: How can he do that when he has given you the total population, including all homes? How can he know how much of that population refers to single-family homes?

Q Is there a figure here for population for single-family homes, Mr. Pierce?

A 5,623 is the population figure for 1,596 households.

Q And would that be approximately 3.3 persons per single-family household?

A I would guess that's approximately correct, 3.3.

Q So if there are 50,000 people in Rio Rancho in the year 2000 and they all lived in single-family homes, that would be about 13,000 homes, correct?

A Approximately correct.

Q And if the same portion of people at Rio Rancho who today live in non-single-family homes do so in the year 2000, there will be less than 13,000 single-family homes, correct?

MR. ARKIN: Is that Mr. Devorkin's testimony or is it a question?

I object, again.

THE COURT: Sustained.

(Continued on next page.)

Q Mr. Pierce, how many people do not live in single family homes at Rio Rancho as of September 1, 1976?

A Approximately 800.

Q And they live in what kind of dwellings?

A Multi-family dwelling units, which include apartments and some mobile homes.

Q And also condominiums?

A I'm including condominiums in apartment-type units.

Q And that is a little bit over ten percent of the total population, correct?

A That is correct.

Q So if the year 2000 population has the same percentage of people living in non-single family homes, would the number of single family homes there be less or greater than 15,000?

A It would obviously be less than 15,000 single family units.

Q By the way, in 1974, were you not projecting your Rio Rancho population for the year 1980 of about 9,000?

A That is a figure, as I recall, that we provided through the city planning department to the U.S. Bureau of Census.

Q And the 1974 population of Rio Rancho was about what?

A If I recall in that period, it must have been about 5,000.

Q So what would the yearly increase -- what yearly increase were you projecting from the year 1974 to 1980?

A As previously indicated, we used the figures which turned out yesterday to be approximately 1,000 per year and merely made a straight line projection to reach that 9,000 point. We did not assume any exponential increase.

Q Is it 1,000 a year or is it less?

A I think it's slightly less.

1970 was --

MR. DEVORKIN: Let me mark this as Government's Exhibit 1110 for identification.

(Government Exhibit 1110 marked for identification)

xx

Q Let me show you 1110 (handing).

Does that refresh your recollection about the population of Rio Rancho in 1974?

A Yes, sir.

Q That was what figure?

A 4700.

qtjw 3 Pierce - redirect

Q And in the six year period between 1974 and 1980, you were predicting the population of Rio Rancho to grow to what?

A To 1980?

9,000 people.

Q A difference of about 4300 people?

A I'm sorry, I missed it.

Q Would that be a difference of about 4300 people from '74 to '80?

A No. That was listed as an average for all the area, not a difference.

Q But the difference between 1974 and 1980 is about 4300, correct?

A That's correct.

Q That is over a six year period?

A From 1970 to 1974.

Q No, from 1974 to 1980 is a six year period, correct?

A That would be approximately 5,000, yes.

Q It is approximately 4300, isn't it?

A 4300, yes, sir.

Q And that is about 700 a year, correct?

A Depending on the time frame, between seven and 800 a year.

Q And at 3.3 persons per single family home, would that be more or less than 300 homes a year?

A If we assume 3.3 at 6,000 people, we are talking about --

Q We are talking about seven or 800 a year, right?

A We may be talking about 200, 250 homes, dwelling units.

Q You were asked yesterday by Mr. Arkin whether you considered Rio Rancho a successful community.

Do you recall that?

A Yes, sir.

Q I believe you testified that so far as its physical development was concerned you did.

Do you recall that?

A I believe I qualified the answer from successful community to what we termed desirable communities.

Q Do you recall being asked -- well, do you recall being asked this question at page 4139 of the transcript:

"Do you consider Rio Rancho a successful community?

"A Yes, sir, in its physiscal development."

Do you recall that question and answer?

A Yes, sir.

Q When you made that answer, to what section, if any, of Rio Rancho were you referring?

A The area which has been developed in terms of residential, commercial, industrial activities, along with recreational activities.

Q And not to the undeveloped portion?

A That is correct.

Q Are you aware of whether Rio Rancho has enough lots in its building area for all of the people who have vacant lots and must exchange into a building area when they want to build if there aren't utilities at their lot?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Are you aware that some of the undeveloped land in the outer units of Rio Rancho has been sold as commercial property?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q I take it, Mr. Pierce, that your statements about the developed portion have nothing to do with whether the vacant land is a safe, sound or profitable investment?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. DEVORKIN: I have nothing further, your Honor.

RECROSS EXAMINATION

XXX

BY MR. ARKIN:

Q Mr. Pierce, last evening you testified that the population projections for southern Sandoval County which appears in your organization's publications you considered to be reasonable and conservative, didn't you?

A Yes, sir.

Q And one of those projections was that southern Sandoval County would have 77,500 persons by the year 2000. Am I correct in that?

A Stated as a possibility, yes, sir.

Q And those projections were honest projections made upon honest assumptions, were they not?

A Our work is intended and always follows a pattern of being completely objective based on some openly stated assumptions.

Q Honest and responsible, too?

A Yes, sir.

Q I take it, also, that it is not your organization's belief or yours that populations expand in a straight line?

MR. DEVORKIN: I object to that question.

THE COURT: Overruled.

A That is correct. This is the experience demonstrated in many areas. It is like having a baby or starting a new business, there is always a startup cost and normally there is an acceleration, so it is an exponential rise.

Q So that a man may have more grandchildren than children, isn't that so?

MR. DEVORKIN: I object, your Honor.

THE COURT: I know you are hungry, Mr. Arkin, but let's get down to something important here.

MR. ARKIN: All right. I will indeed.

Q When you journey from Albuquerque to Rio Rancho, a common route would be across the I-40 bridge, would it not?

A Yes, sir.

Q And that I-40 bridge is to the north of the bridge which you were describing during your questioning by Mr. Devorkin?

A Yes, sir.

Q And have you done studies of the traffic density or traffic use of the I-40 bridge?

A Yes, sir.

Q And is the traffic use on the I-40 bridge greater or lesser than the bridges to its south?

A As I recall, it's approximately -- the average daily travel in 1974 was approximately the same as that which we stated for Central Avenue Bridge a little while ago.

Q And the I-40 route would be a common route to Rio Rancho?

A Yes, sir.

Q As well as the bridge across Corrales Heights, am I correct?

A Yes, sir.

Q So that if you added the traffic density for the I-40 bridge and the Corrales Heights bridge, the traffic density would be greater than the bridge to the south of the I-40 bridge, am I correct?

A Yes, sir.

MR. DEVORKIN: I object to that.

THE COURT: Overruled.

Q So that when Mr. Devorkin asked you the question as to whether the bridge to the south of I-40 had a traffic denisty of two and a half times of the Corrales bridge, that that would only be accurate if you didn't consider the I-40 bridge, am I correct in that?

A Yes, sir.

Q With respect to the airport which you say is being planned or projected or studied, about how many acres would that airport encompass?

A Our initial development has established a requirement for first phase of somewhere on the order of 1200 acres, with the second and third phases requiring approximately 5500 acres, and in the area that I referenced as contingency planning for possible air carrier facilities sometime in the distant future, we have estimated the need for a total of around 14,000 acres.

Most of the additional acreage between 5500 level and 14,000 is the area I previously described as being in public ownership to the north of the Westland property and on the western escarpment.

Q With respect to the potential development of the airport, you testified that some city planners disagreed with its necessity, is that so?

A No, sir, I don't believe I made that statement.

THE COURT: He never said that.

MR. ARKIN: I apologize if he didn't. I was trying to get --

Q Did Mr. Devorkin ask you whether or not those plans were in doubt?

THE COURT: That was excluded.

MR. ARKIN: Excuse me.

Q Rio Rancho is now within the SMSA, is it not?

A Yes, sir.

THE COURT: What is the SMSA?

THE WITNESS: Standard Metropolitan Statistical Area as defined by the U.S. Bureau of Census.

MR. ARKIN: I thought we had that definition before.

Q That definition, the SMSA is for Albuquerque, is it not? It is the Albuquerque SMSA in which Rio Rancho is situated.

A The Albuquerque SMSA includes all of Bernalillo County and all of Sandoval County.

Q Going to the north of Rio Rancho?

A Yes, sir.

Q By the way, as you define Albuquerque urbanizing area, would the Albuquerque urbanizing area include that development of 200,000 acres which Mr. Devorkin asked you about?

A The greater Albuquerque area or the Albuquerque urbanizing area that I assumed we were referring to yesterday was the northern portion of APJ1 which we have defined as the urbanizing area, that is, that portion of

APJ1 north of Isleta Reservation.

Q Which would, therefore, not include that 200,000 acres?

A No, sir. We do not refer to the urbanizing area south and east of Valencia County as part of the Albuquerque urbanizing area.

Q The Isleta Reservation is situated to the south of the municipal area of Albuquerque, isn't it?

A Yes, sir.

Q And it is in the northern portion of Valencia County?

A The Isleta Reservation is -- the borders of the two counties run almost directly through the center of the reservation. To the northern part of the Isleta Reservation is technically in Bernalillo County and the Southern part of it is in Valencia County.

Q Utilizing Government's Exhibit 1075-A, approximately where would the Isleta Reservation be situation?

A About six to seven inches below where you have the pointer now (indicating).

Q And this reservation encompasses how many acres, that you know?

A I don't know. It extends completely across the APJ1 area from the mountains due west and it is approximately five miles -- four to five miles north and south.

Q That is due south of the city?

A Yes, sir. It is a border which runs directly across east and west, or boundary.

Q And you would agree that that particular reservation is a barrier to the growth of the urban area south, is it not?

A Yes, sir.

Q The urban area to continue south would have to jump over that reservation in order to continue southwards in its development, would it not?

MR. DEVORKIN: What do we mean again about the urban area? Are we talking about where the development is now?

MR. ARKIN: Can I ask a question?

THE COURT: Wait a second.

The witness said that north of that reservation there are 36 square miles available for development; not south, not that you have to go through the reservation.

If you go from the center of Albuquerque in the southwest quadrant to the point where you hit the borde of that reservation, which is your limitation, there are thirty-six square miles.

With that we will adjourn for lunch.

See you at 2:15.

Take this down so the jury can get out.

(Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

ALBERT I. PIFRCE, resumed.

THE COURT: You may proceed.

MR. ARKIN: Thank you, your Honor.

RECROSS EXAMINATION CONTINUED

XX

BY MR. ARKIN:

Q Mr. Pierce, before lunch you testified that there were some beginnings of development in the Siandia Indian Reservation, is that right?

A Yes, sir.

Q Do you know whether the Indians have been able to sell their land or have merely leased it for a period of time?

A To the best of my knowledge, the Indian lands are being leased.

Q So that somebody who comes to develop there can never have ownership in fee, is that correct?

A Yes, sir, that is my understanding.

Q Are you also aware that there are now builders other than AMREP Corporation building houses on the Rio Rancho development?

A No, sir, I am not familiar with the details of who is doing the construction.

Q Did you ever hear of Villa Construction?

A No, sir.

MR. DEVORKIN: I object to this as way beyond redirect.

THE COURT: Sustained.

Q You testified on redirect examination that you spent a few hours with a representative of AMREP or the defense, is that correct?

A Yes, sir.

Q I am not going to ask you who that is, I am going to ask you about certain things which were said, questions asked and answers given, so please don't mention who that is, all right?

A Yes, sir.

Q Do you recall that this meeting took place in May of 1976?

A Approximately correct, yes.

Q Were you asked at that time this question and did you give this answer:

"Q So, then, to recapitulate, what you are saying before is that the growth of the Albuquerque area which you project as continuing is bound to be in the west and the northwest directions."

MR. DEVORKIN: I object.

THE COURT: I want no examination of this witness on what he may have said to some representative of your office.

MR. ARKIN: May I ask him what he said previously, your Honor?

THE COURT: No, you had an opportunity to do that on your cross examination.

Q Mr. Pierce, is there a certain portion of the west mesa which is volcanic in its constitution?

A Yes, sir.

Q What do you mean by "volcanic"?

A Due west of Albuquerque there are several existing volcanic cones and apparently many years ago those were erupting and laid down a rather expansive layer of volcanic rock.

MR. DEVORKIN: Your Honor, I object to the line of questioning as way beyond --

THE COURT: I assume he is going into the information that was brought out as to the amount of available square miles for development west of Albuquerque.

Is that what you are looking for, Mr. Arkin?

MR. DEVORKIN: That was in response to cross.

THE COURT: Wait a second, he went beyond your direct. You in effect cross examined this witness on Mr. Arkin's cross examination and he is entitled now, because the first time it ever came out what land was available was on your redirect examination.

MR. DEVORKIN: Okay.

THE COURT: Which incidentally you should have brought out on your direct. Go ahead.

MR. ARKIN: Thank you.

Q I am sorry, Mr. Pierce, would you repeat what volcanic lands are?

A The products of the eruption of volcanoes bring volcanic rock to the surface laid down as a base to the mesa that has been referred to.

The volcanic escarpment is the outline of that mesa where there is exposed volcanic rock.

Q Are lands which I have called volcanic lands suitable for development in your view?

A Could we be more precise regarding the area?

Q I am going to ask you about the area.

THE COURT: No, let's get the area. I want to know whether this impinges on the square miles he said was available.

MR. ARKIN: Very well.

Q Mr. Pierce, with respect to volcanic lands, are you able to identify on 1075-A, that is that large mosaic to your left, where the volcanic lands west of Albuquerque lie?

A Yes, sir, the area --

THE COURT: You had better turn it around so the jury can see it.

(Pause)

Now, Mr. Pierce.

A The area we are referring to, outlined by the volcanic escarpment from the area of Central and I-40, moving northward in an irregular pattern, but generally northward is the portion of the volcanic rocks which are exposed.

As indicated before, these vary in height from a few feet to several hundred or perhaps 100 or more than 100.

In this general area, just to the west of that escarpment, there is a line of volcanoes, volcano cones which remain exposed. That apparently is the source of laying down that volcanic base.

This whole area has varying soil conditions, some as much as 200 feet before reaching any bedrock, primarily a sandy loamy soil. Not loamy, but certainly sandy covering, which apparently is the result of erosion which has occurred over many years.

THE COURT: Is that included in the square mileage that you testified on redirect was available for home development?

THE WITNESS: Sir, I don't believe my statement was available for home development, but vacant land available for development. Not for home development.

MR. ARKIN: That was my next question, Judge.

THE COURT: All right. What type of development?

THE WITNESS: That is the area where we are currently planning an air facility.

THE COURT: So when you say there are 48 square miles in the northwest quadrant available for development, that includes the area for the airport?

THE WITNESS: Yes, sir.

THE COURT: If you take the airport out what have you got left?

THE WITNESS: The same amount of vacant land, sir.

THE COURT: Not 48 miles? You say the 48 square miles includes the amount of land you are setting aside for the airport. If you take that out of the 48 square miles, how much do you have left?

THE WITNESS: The first phase, as I indicated, is about 5500 acres, would approximate eight square miles.

THE COURT: Yes.

THE WITNESS: So if we subtracted that from 48 --

THE COURT: That is 40.

THE WITNESS: Approximately 40.

THE COURT: Most of that, you say, is what you have just described to be the volcanic area?

THE WITNESS: Yes, sir, that is the base laid down from volcanic action from those volcanoes.

THE COURT: All right. He is down to 40 square miles still available.

Q Is a portion of that 40 square miles still available covered by volcanic base or volcanic ash or lava?

A Only in the immediate vicinity. As I previously indicated, the borings that have occurred in that area suggest that there is an overburden of perhaps 200 feet on the average of silt or sand which has been laid down on top.

Q A portion of that square miles which you were referring to is covered over with volcanic rock, is it not?

A Exposed, yes, sir, a portion of it shows exposed volcanic rock.

Q Do you know what portion?

A Principally, to the best of my knowledge, in the area of the volcanoes which are in a line, north-south direction, in this area (indicating).

Q You cannot really build houses on volcanic rock, can you?

A I suppose it would be technically possible.

Q The human spirit can overcome a great deal, but it is not something which I take it you believe to be a reasonable or feasible means of development; do you?

A In other areas where we have similar considerations the installation of utilities is extremely costly.

Q And so really what you are saying is the development takes a path of least resistance and lava rock is not the path of least resistance, isn't that so?

A I think the trend of development, or the trends of developers does follow that pattern, yes, sir.

THE COURT: Can we do it this way, Mr. Pierce:

You are familiar with Rio Rancho. I assume you are familiar with the topography of Rio Rancho.

THE WITNESS: Yes, sir.

THE COURT: When you say that the land is available for development, what I am interested in finding out, comparable land to Rio Rancho.

Now, this volcanic area I don't think from what you just testified would be comparable area, would it?

If I was going to buy land for developing, I wouldn't go into a high cost development area. I would go into a Rio Rancho type, which I gather is cheaper.

THE WITNESS: It would probably be most cost effective if I may I perhaps should qualify my opinions on this because that's all they are, it depends a great deal on the availability of other resources including national water resources.

It depends upon the availability of the systems required to serve any particular kind of development in terms of delivering water as well as disposing of the liquid waste.

Those are only a few.

Other costs of development relate to any earth movement that is necessary and, again, in this area we have what appears to be an overburden, I am not an expert in this area, what appears to be an overburden of substantial depth, anywhere from 50 to 200 feet, of a sandy soil over the top of the -- until we get to the bedrock, which is primarily lava.

THE COURT: Now, I know this is going to ask for a speculative opinion: How much of the 40 square miles would you take out to cover land of the type you are describing? We will take a ball park estimate from you.

THE WITNESS: Recognizing that the provision or extension of city utilities or the provision of the other separate utility systems would be an inhibiting factor, then I would remove out of the 40 square miles that area below the escarpment which I believe we previously estimated to be about three miles or three and a half miles and some ten miles long from north to south.

THE COURT: That would then leave five miles out of the 40?

THE WITNESS: Yes, sir. May I ask if we are dealing --

MR. DEVORKIN: I believe it is ten, your Honor.

THE COURT: He had 48. He has eight for the airport is 40. 35 from 40 is five.

Ten by three and a half.

THE WITNESS: The ten by three is the area with the highest potential for development belos the escarpment, with the greatest propensity for development.

THE COURT: Right, so he's got five square miles.

MR. DEVORKIN: I think it is the converse. He is saying 30 or 35 is the area that has the highest propensity and that leaves five or so that doesn't have that propensity.

THE COURT: Oh, I misunderstood you. Is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: So there is still that three, three and a half by ten that you say would be roughly similar to the type of Rio Rancho as far as topography?

THE WITNESS: Yes, sir, for ease of development.

THE COURT: All right.

BY MR. ARKIN:

Q While you are at the mosaic with your pointer, Mr. Pierce, there are more than one phase to development of the projected airport, are there not?

A Five, as a matter of fact.

Q If you utilize all five phases --

THE COURT: Wait, wait, they don't own it. Do you own it?

THE WITNESS: No, sir.

THE COURT: Is it available for somebody else to buy if they want it?

THE WITNESS: Yes, sir. It is owned by Westland Development Company, Inc.

THE COURT: All right. That is not permanently out the way an indian reservation is out. It is something they would like to do, but anybody can buy it.

MR. ARKIN: I understand but it is projected for public use is the point of my question, your Honor.

THE COURT: No, I won't take that.

MR. ARKIN: All right.

Q Would you agree, Mr. Pierce, that the direction or trend of growth of Albuquerque is largely a matter of judgment?

A Yes, sir, it has to be both in terms of judgment related to public policy, which depends upon the local elected officials, and the judgments of private developers and private business people.

Q Also, as you said yesterday, dependent to an extent upon the physical and legal constraints in the Albuquerque urbanizing area, isn't that so?

A Yes, sir.

Q And you said this morning that it would not be reasonable to say that the only way in which Albuquerque, the Albuquerque urbanizing or urban area can grow is to the northwest. I take it you would agree that for somebody to make a judgment that was a logical path of growth or a reasonable path of growth was not unreasonable, isn't that so?

MR. DEVORKIN: I object, your Honor.

THE COURT: Overruled.

Q Do you understand the question?

A I am sorry, I didn't hear the Judge's remark.

MR. ARKIN: The Judge said overruled.

THE COURT: You can answer.

A I think we would look at the opportunities that exist and, again, giving effect to the judgment that development will occur in the most cost effective manner, it is not unreasonable to assume that the principal development will occur or a development will occur on the west side and in the northwest area.

Q In the direction of Rio Rancho?

A Such development is already occurring.

MR. DEVORKIN: When we talk about an area, can we define what we are talking about. It is very difficult to follow and the time period.

THE COURT: He has defined that a number of times.

MS. HYNES: Can the record reflect the area he talked about in answering the question?

THE COURT: He is talking about the northwest quadrant which has been defined in the record.

MR. DEVORKIN: Fine.

MR. ARKIN: Your Honor, aside from a very brief side bar, which I very much ask your Honor to have, I am finished. May I have a brief side bar? Thank you.

(At the side bar.)

THE COURT: Yes, Mr. Arkin.

MR. ARKIN: Your Honor, I have no wish to argue with your Honor's ruling, I just want to make a record and that's why I called for the side bar.

Mr. Pierce was subjected to an interview which was taped. In that interview he made certain statements which I sought to cross examine about. Your Honor has not permitted me to do that.

THE COURT: No, no, sorry. You had an opportunity to do that on your cross examination and you didn't do it. There were facts in that interview which you wanted in this record, you should have asked them on your cross and put them into the record. I will not let them back in on recross examination. Not cross examination, recross examination.

MR. ARKIN: Absolutely correct, your Honor, I am sorry if I misstated it. The reason I felt constrained to do it on recross examination is because of what happened on redirect examination which as your Honor recognized was different in content and substance than direct examination.

THE COURT: I know, but you had the opportunity to do it.

MR. ARKIN: It was not necessary on cross.

THE COURT: I am sorry, I have ruled. The record will reflect it.

(In open court.)

MR. DEVORKIN: This is recross by Mr. Fleming?

THE COURT: Mr. Fleming, you were not in this area at all. This was in Mr. Arkin's area and he was allowed to recross. No recross by you. Sorry.

MR. FLEMING: Can I beg, Judge?

THE COURT: The scope of your cross does not give you the right to recross.

MR. FLEMING: My point --

THE COURT: You may step down. Thank you very much.

MR. FLEMING: Can I have a side bar?

THE COURT: You may.

(At the side bar.)

MR. FLEMING: Judge, as your Honor said, this whole business about 30 miles was brought up on Mr. Devorkin's --

THE COURT: And Mr. Arkin has crossed on it. He brought it up. It was his subject matter and that's the end of it. Sorry.

MR. FLEMING: I just wanted to do a couple of things.

Would you read this, your Honor?

THE COURT: No. Mr. Arkin brought this subject matter up. He was allowed to redirect in essence on what he brought up. You weren't in that field at all in your cross examination.

MR. FLEMING: I just want to ask two questions in that area generally. It was Mr. Devorkin's redirect.

THE COURT: I am sorry, this was Mr. Arkin's and he had the opportunity to do it.

MR. FLEMING: All right, your Honor.

(Continued on next page.)

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(In open court.)

THE COURT: Next witness.

(Witness excused.)

MR. KAUFMAN: The government calls George Carruthers.

XXX GEORGE L. CARRUTHERS, called as a witness by the government, having been first duly sworn, testified as follows:

XXX DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Carruthers, please keep your voice up so I can hear you back here, then everybody on the jury can hear you as well.

Where do you live?

A I live at 604 Ridge Place Northeast in Albuquerque, New Mexico.

MR. FLEMING: I can't hear the witness, your Honor. I'm sorry.

A 604 Ridge Place Northeast, Albuquerque, New Mexico.

Q And by whom are you employed?

A The city of Albuquerque.

Q In what capacity?

A I'm the city planning director.

Q And is that with the city planning department of Albuquerque?

A That's correct.

Q And how long have you been the director of the Albuquerque planning department?

A A little over two years.

Q And before that, were you with the planning department?

A Yes, I was.

Q How long have you been with the Albuquerque planning department?

A Since August, 1957.

Q And what positions have you held in the Albuquerque planning department since 1957?

A I have held positions as assistant planner, senior planner, all of them in the current planning division in the early years, and then I was in charge of that division of the department for several years as an associated director from about 1963 until 1968, continued as head of that division until I was appointed director in 1974.

Q What are the overall responsibilities of the Albuquerque planning department?

A The Albuquerque planning department is the staff advisor to the city planning commission, the city council, the mayor and the county planning commission and county commission by contract with the county under a joint powers agreement on matters pertaining to land development and planning, capital improvement programming.

We are responsible for the preparation of the comprehensive plans for the city of Albuquerque and Bernalillo County, also for doing neighborhood plans, redevelopment plans, historic preservation efforts, capital improvement programming, coordination of utility master plans with the comprehensive master plan, review of zoning matters --

THE COURT: When do you have time to eat?

Let's go on, Mr. Kaufman.

Q You said you are under contract with the county. Which county is that?

A Bernalillo County.

Q What is your educational background, Mr. Carruthers?

A I have a Bachelors of Fine Arts from Ohio University in 1953 with a divided major in art and architecture.

Q And when did you settle in the city of Albuquerque?

A In June of 1956.

Q What sections of Albuquerque have you lived in?

A In the northeast and southeast sections and the university area where I now live.

Q In which quadrant of the city is the university section in?

A Northeast.

Q In connection with the Albuquerque planning department's responsibilities concerning comprehensive planning, when was the first such work done since you have been with the Albuquerque planning department?

A The planning department began work on what was called the X-ray and prognosis report for the 1980 land use plan I believe in the latter part of 1960. That work went on through 1961 and 1962, when that report was completed.

Q I show you what has been marked Government's Exhibit 41 for identification, and ask if you can identify that (handing).

A This is the AMA X-ray and prognosis report which includes the 1980 land use plan.

THE COURT: What is the exhibit number?

THE WITNESS: 41, I believe.

THE COURT: This is marked for identification. Are you offering it?

MR. KAUFMAN: After one or two more questions, your Honor.

Q Was this report issued by the planning department pursuant to law which authorized the issuance of such reports by the planning department?

A Yes.

MR. KAUFMAN: The government now offers 41 for identification, your Honor.

THE COURT: Any objection?

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q When was this document prepared, Mr. Carruthers?

A I believe most of the preparation took place in 1961 and the report, I believe, was published in 1962.

Q What is the X-ray association?

A That was -- that title was the notion of the fellow who was primarily responsible for writing that.

What he had reference to was an examination of the Albuquerque area with respect to its future growth and --

Q This was prepared by the planning department, though, correct?

A Yes.

Q And he was working for the planning department?

A That's correct.

Q And "X-ray" was just his name?

A That's right.

Q Or the name he gave the pamphlet?

A That's right.

MR. ARKIN: We have no objection.

XXX (Government's Exhibit No. 41 marked for identification received in evidence.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, the title of Government's Exhibit 41 is AMA X-ray and prognosis, is that right?

A Yes.

Q What does the AMA stand for?

A Albuquerque metropolitan area.

THE COURT: Would you define the Albuquerque metropolitan area for us as used in that document?

THE WITNESS: In that document, the Albuquerque metropolitan area was defined as about 120 square miles including the area southeast of the city south of the airport, in other words, the southeast mesa area. The study area did not include land, very much land outside of the city limits on the west side, it did not include very much land outside the city limits to the northeast and it did not include specifically north Albuquerque Acres or the Elena Gallegos land grant.

THE COURT: Can the members of the jury see that?

MR. KAUFMAN: I am going to refer to this 1073-A, your Honor.

Q Mr. Carruthers, 1073-A is a mosaic of the Albuquerque area in 1959.

Utilizing this photograph, can you show us the approximate boundaries of the AMA that you used in the 1962 report?

Use this pointer.

THE COURT: You better stand to the side of it so we can see it.

A The boundaries went more or less along the west side and it includes the valley.

It did nothing much east of this area here, which is the eastern edge of the valley along Edith Boulevard, and then along in this area. It did not go north of Montgomery Boulevard or grant boundary, rather, here (indicating); then down in this area. It included this southeast mesa area which is blocked off in this photograph (indicating).

Q As you go south and west, what is the approximate boundary?

A It came along, as I recall it, it included all of the south valley area.

Q Did it extend west of the south valley area?

A Very slightly west.

I need to look at the map.

Q Is there something in the report that would refresh your recollection?

A Yes.

(Pause.)

A I believe it came right along that boundary right there, which is pretty much Coors Road southwest, and it followed the census tract boundaries that existed at that time in the 1960 census at that time here and then going on north (indicating).

MR. FLEMING: May I ask a question, your Honor?

THE COURT: Sure.

MR. FLEMING: Did it include what has been called here the Atrisco grant?

THE WITNESS: Portion of it, yes.

MR. FLEMING: What percentage of it?

THE WITNESS: Very small percentage.

MR. FLEMING: Less than 10 per cent of it?

THE WITNESS: I would guess so, yes.

MR. FLEMING: Less than 5 per cent of it?

THE WITNESS: I don't know what percentage.

MR. FLEMING: Very small?

THE WITNESS: Yes.

MR. FLEMING: At that time?

THE WITNESS: Yes.

Q Mr. Carruthers, do you have another copy of the AMA report?

A Yes, I do.

Q Is that an exact duplicate of Exhibit 41 in evidence?

A Yes, it is.

Q Mr. Carruthers, was this report circulated in Albuquerque at the time that it was issued?

A Yes.

Q And how was it circulated?

A It was distributed to anyone interested in the community; to builders and developers, through our office.

I do not know who was on teh mailing list. I'm sure we had one.

MR. FLEMING: I move to strike the testimony, if your Honor please.

THE COURT: He doesn't know who was on the mailing list.

MR. FLEMING: That's why I move to strike it.

THE COURT: You want to strike it that he doesn't know who was on the mailing list?

MR. FLEMING: I want to strike all his testimony on direct examination because he says he doesn't know who it was distributed to.

THECOURT: Overruled.

Q What types of entities were on the distribution list?

A Well, I do not know who was on the distribution list.

Q I understand you don't remember who specifically was on the distribution list. Is that correct?

A That's right.

Q If you know, do you know what types of either people or concerns were on the distribution list?

MR. FLEMING: I object to the form of that question.

THE COURT: Overruled.

A Real estate brokers in the Albuquerque area, builders, people who were active in development in the Albuquerque area.

Q In preparing this report, were projections used in connection with the Albuquerque area future population?

A Yes.

Q Directing your attention to page 104, there are a series of three population estimates there for both 1970 and 1980.

THE COURT: What page is that?

THE WITNESS: 104.

Q Can you explain these population estimates and tell us which one of these estimates were used in connection with this report?

A There were -- there were three ranges of population projections prepared by Stanley Brasher that were used in preparation of this report.

The high range was the range that was used for the land use plan in this report. His projection for 1970, the high range was 437,600, and for the --

THE COURT: Wait, wait.

THE WITNESS: I'm sorry. For the standard metropolitan statistical area, which is the --

THE COURT: Hold it.

What year?

This is a 1962 publication, right?

THE WITNESS: That's correct.

THE COURT: And they used the high, the report used the high range estimate?

THE WITNESS: That's right.

THE COURT: For what year are you referring to when you say that figure?

THE WITNESS: Okay.

There were several figures used here, but --

THE COURT: High range is the one you said was used.

THE WITNESS: The high range for taking it to 1980 was 631,100 for the Albuquerque metropolitan area, the same area --

THE COURT: How many?

THE WITNESS: 631,100.

THE COURT: Go ahead.

MR. FLEMING: Can we establish the population at the time the report was prepared?

THE COURT: Certainly.

What was the population at the time of the report, or the 1960 census is what I assume they had?

THE WITNESS: At the time of the report, I think they have the 1960 census figures here, but for the total statistical area used in the census, it was 255,319.

That's for all of Bernalillo County.

THE COURT: The entire county?

THE WITNESS: That's right.

97 percent of that population was living within this Albuquerque metropolitan area at that time.

MR. FLEMING: 230,000?

THE WITNESS: That's pretty close.

MR. KAUFMAN: I don't think Mr. Fleming's arithmetic is right, your Honor. It is 97 percent of 255,000.

I think the three percent difference is 7500 taken from 255,000, which would make it approximately 248,000, I believe.

THE COURT: Would you accept that, Mr. Fleming?

MR. KAUFMAN: Mr. Fleming said 230,000.

MR. FLEMING: I will accept that without equiovaction, your Honor.

THE COURT: Good.

MR. FLEMING: Or hesitation.

And I apologize for my math.

THE COURT: Go ahead.

Q Just so we don't get confused later on, Mr. Carruthers, there are estimates here for the AMA and the SMSA, is that right?

A That's right.

Q The AMA is the Albuquerque metropolitan area that you just previously defined, correct?

A That's right.

Q The SMSA is the equivalent of all of Bernalillo County, is that right?

A That's right.

Q And as of 1960, 97.4 percent of the population of Bernalillo County was within the AMA, is that correct?

A That's correct.

Q If we can focus now on the population projections for 1970 and 1980 with respect to the AMA, which population projections were utilized in connection with this report?

A For 1970, 420,096; for 1980, 631,100.

Q And does the next few sentences after those projections explain why the high series was used?

A Yes.

The high series was used for purposes of land use planning in order to cover all eventualities.

MR. KAUFMAN: Your Honor, I would just like to read the next few sentences.

(Mr. Kaufman read from Government Exhibit 41 in evidence to the jury)

Q Mr. Carruthers, directing your attention to page 32 of the report, at that section of the report, was a general overall view taken of vacant and agricultural land in the AMA?

A Yes.

MR. KAUFMAN: If I may read a portion of that, your Honor, from page 32 under the section "Vacant and Agricultural Land."

(Mr. Kaufman read from Government Exhibit 41 in evidence to the jury)

Q Mr. Carruthers, I gather that in connection with the report that was issued, the report was focusing on the 45 percent of Bernalillo County that was not owned by the state or federally controlled, is that correct?

A Yes.

Q The report on page 33 continues to review the --

MR. KAUFMAN: Excuse me, your Honor.

THE COURT: Go ahead.

MR. KAUFMAN: I am sorry.

Q The report on page 33 continues to review the situation with respect to agricultural land in the AMA, is that correct?

A Yes.

MR. ARKIN: Your Honor, I believe the document is in evidence and it can speak for itself. To ask

Mr. Carruthers what the document savs I don't think is very helpful.

I object.

THE COURT: That's true.

Q Mr. Carruthers, did the 1962 report go on to analyze what the AMA's land use needs would be given the projected population increases and the status of developed and undeveloped land?

A Yes, it did.

Q Directing your attention, starting with page 107, can you tell us what this report found with respect to the AMA's land use needs given the projected population increases?

A Using the maximum population projections for the period from 1960 to 1980, there is a total area or acreage figure projected to be needed, 58,413 acres based on that high population projection of 631,100, and this also allows for a 14,398 acre vacancy allowance within that total.

MR. FLEMING: I am sorry, you just can't --

THE COURT: You have got to keep your voice up. Counsel have to hear you.

MR. FLEMING: It also allows for what?

THE WITNESS: It allows for 14,398 acres

vacant within that total.

MR. FLEMING: A total of what?

THE WITNESS: A total of 58,413 acres needed for development based on the high population projection through 1980.

Q And did the report continue on the survey how the AMA could meet the demand for those approximately 58,000 acres?

A Yes, it did. That's reflected in the land use plan itself.

MR. KAUFMAN: Your Honor, I think at this time I would read from page 108.

Q Before I do, though, there is a mention in this report of a loop expressway.

Was that an existing roadway at the time?

A It was not existing.

Q Was that a proposed roadway?

A It was under consideration and was shown on the city's transportation plan at that time or their thoroughfare plan.

Q And can you tell us approximately where it was proposed to run in terms of its location in the AMA?

MR. FLEMING: Your Honor, I object, unless they did it.

THE COURT: Proposals can be made by an official body.

MR. FLEMING: I agree.

MR. KAUFMAN: Your Honor, the loop expressway is referred to in the report and in order to know what the report says we have to define the location of the proposed loop expressway.

THE COURT: Can you give us that?

THE WITNESS: Yes.

The loop expressway was shown running along what is now Tramway Boulevard on the east side of Albuquerque over close to the --

THE COURT: Would you like to get down and show it to us?

THE WITNESS: -- near the Siandia Foothills.

It was shown running along this alignment here and then across on Los Angeles Boulevard across over to this area by the volcano cones on the west side and then down here and across the valley and running up to Harris Arroyo back to that street there by the foothills (indicating)

THE COURT: All right, Mr. Felming?

MR. FLEMING: Excuse me?

THE COURT: Mr. Fleming, is that what you wanted?

MR. FLEMING: I had objected to it, but that is fine.

THE COURT: All right.

Go ahead.

Q Mr. Carruthers, at the top of page 108 there appears a list of different types of land. What is this a list of?

A The table is entitled "Area Available in Acres" and then it goes down to list those by type and the first type is listed as "Subdivided but undeveloped land within the AMA of 7,435 acres".

The next one is master planned land, that is master planned, but not yet subdivided, 5,836 acres.

The third category is good agricultural land and that is shown as 4,292 acres.

Floodable land was shown as 681 acres.

Additional areas including floodable land of 2,805 acres and vacant land 48,465 acres.

Q For a total of?

A For a total of -- there is a total buildable area of 69,514 acres and unbuildable land of 6,145 acres.

Q This figure of a total buildable area of

69,514 acres as of 1960 reflected what?

A It reflected the land within the Albuquerque metropolitan area.

Q Was this land that was capable of development at that time?

A Yes.

Q Then the next column talks about the AMA extended area.

Is the AMA extended area the difference between the AMA and the boundaries of the proposed loop expressway?

A Yes, it is. The AMA extended area is defined as including about a two mile strip west of the proposed loop expressway and the area enclosed by the steep slopes on the east side of the city.

Q What was the total buildable acreage found to exist within those boundaries?

A 124,581 acres.

MR. KAUFMAN: Reading from the last full paragraph on page 108:

"As a general guide to the area needed there is approximately 18,500 acres of developable land within the present city limits and about 58,000 acres within the loop expressway. Under expected conditions, therefore, series 2, all development in the next ten years could take place within the city and still leave more than a five percent vacancy. By 1980 there would still be plenty of open space remaining within the loop expressway.

"Under maximum conditions, however, the developed area would be well beyond the city limits by 1970 and beyond the expressway by 1980. Although this latter possibility seems less likely than the former, the plan should account for all foreseeable exigencies."

Q Mr. Carruthers, did this 1962 report project what areas of the Albuquerque area would experience growth because of the projected population increases?

MR. ARKIN: Are we speaking of the Albuquerque metropolitan area?

MR. KAUFMAN: Yes.

A Yes, the report points out that the majority of the growth was expected to be on the northeast area -- in the northeast quadrant of the city.

Q Mr. Carruthers, is it a fair statement that the report anticipated some growth in all quadrants of the AMA?

A Yes.

MR. ARKIN: Objection. He is asking for an opinion.

THE COURT: He asked whether the report

states that.

MR. ARKIN: He asked whether that was a fair statement, your Honor.

THE COURT: I gather he is referring to the report.

Q Directing your attention, Mr. Carruthers, to pages 23 through 29, if you would just briefly look over those pages.

(Pause)

Q Would it be a fair statement, Mr. Carruthers, to say that this report projected growth between 1962 and 1980 for all sections of the Albuquerque metropolitan area?

A Yes.

Q With the predominant growth taking place in the northeast?

A Yes.

Q Are you familiar with Rio Rancho Estates?

A Yes.

Q Approximately when did Rio Rancho Estates begin development?

A I believe in 1962.

Q Do you know who owned that land before Rio Rancho Estates owned it?

A I am not absolutely certain, but I believe --

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Mr. Carruthers, again directing your attention to 1073-A, which is a mosaic for the year 1959, can you show us where the land that was to become Rio Rancho Estates is located on this photograph?

A The land that Rio Rancho Estates occupies is above that line right through there. So this land up here and off the map.

Q The southern boundary of Rio Rancho Estates is the county line between Bernalillo and Sandoval County, is that correct?

A That is correct.

Q With respect to the projections and the AMA's ability to handle the increased population that we were just discussing in the 192 report, did that report just deal with Bernalillo County?

A The AMA report dealt primarily with just the area within Bernalillo County which is defined as the AMA.

Q Part of Bernalillo?

A That is right.

Q Not extending into Sandoval County at all, is that correct?

A It did not.

Q Mr. Carruthers, there has been testimony before at the trial about the quadrants of the city of Albuquerque. Just to make sure we are still talking about the same quadrants, can you tell us what the quadrants of the city of Albuquerque are and point them out on this photograph?

A The northeast quadrant is the one that is bounded by the railroad tracks running through here down to Central Avenue, which is right here. This whole area here.

The southeast area is separated by the railroad tracks on the west and Central Avenue on the north and then bounded by military land on the south.

The southwest quadrant runs from the railroad tracks westward and is south of Central Avenue.

The northwest quadrant is everything north of Central Avenue and west of the railroad tracks.

Q Now, by using identifiable land marks on this photograph, can you show the Court and jury what the extent of Albuquerque's development was as of 1959?

A Albuquerque's development was in the northeast area extending up to almost Montgomery Boulevard in this area here. There was still some land south of Montgomery undeveloped.

Q This east-west road right here, is that what you are referring to as Montgomery?

A That is right.

Q Just so the record will be clear, this is an east-west road --

THE COURT: Isn't it possible to give the witness a red crayon or something and let him mark it.

MR. KAUFMAN: Yes, your Honor, I have one right here.

Q If you will just mark it with an M, just on top of it.

(Witness complies)

Q As of 1959, Mr. Carruthers, is it correct to say --

THE COURT: No, just ask the witness direct questions. Let's not have the same with you as I had with Mr. Devorkin all morning.

Q Continue, Mr. Carruthers.

A The development in the northeast was extending almost to Montgomery Boulevard and the area over as far east as Louisiana Boulevard and then it was largely south of Candelaria, this area over here, which is east of Wyoming Boulevard and then for about a mile and a quarter or so east and then back down to Candelaria and then down along Juan Tabo, along the east side --

THE COURT: Can't the witness take that pen and do an outline of the development on that map? Isn't that easier?

The jury doesn't know the names of all these streets and where they are.

(Witness complies)

THE COURT: Would it be easier if you would lay it flat?

Q This street on the east is Juan Tabo, you said?

A Yes.

Q Can you just label that?

(Witness complies)

Q Mr. Carruthers, directing your attention to the area west of the river again, can you describe the extent of development and using the red pen define it for us?

(Witness complies.)

MR. ARKIN: Could we have the year for that particular mosaic?

MR. KAUFMAN: Yes, 1959.

MR. ARKIN: Thank you.

A The development on the west side extended essentially to the edge of the valley floor here in the south valley. It didn't go up onto the west mesa except in this area right around Central Avenue on the west side.

There was virtually no development except the University of Albuquerque campus on the west side of the river all the way up except for some agricultural land on the valley floor up in this area and the small 7 Bar Airport at the north end.

Q With respect to the land that is east of the north valley and west of the interstate, is this the interstate up here?

A That's where the interstate is now, yes.

Q What is this road or something that appears to be a road at that time?

A It was Route 422.

West of that area is vacant down to the eastern edge of the valley for the most part. There were, I believe, some gravel extraction operations in there just beginning.

Q We have had testimony here about the Elena Gallegos grand and North Albuquerque Acres. Can you point out on this map where that is located?

A Yes. The Elena Gallegos grant runs from this line right here.

Q That would be approximately a half inch above Montgomery Boulevard on this map?

A That's right, one quarter of a mile north of Montgomery Boulevard and runs all the way to the crest of the Siandia Mountains over here and it runs to this line on the north and then up around North Albuquerque Acres.

Q Is North Albuquerque Acres subsumed within the Elena Gallegos grant?

A No, it is north of the grant area as we ordinarily refer to it. In this area right here (indicating).

Q What is above North Albuquerque Acres?

A The Siandia Indian reservation.

Q Mr. Carruthers, in February of 1964, did the

Albuquerque planning department issue another report?

A Yes, we issued the 1985 land use plan.

Q I show you what has been marked Government Exhibit 60 already in evidence. Can you identify that?

A Yes, that is the 1985 land use plan.

Q Do you have your own copy of that?

A That's my own copy.

Q This is your own copy?

A Yes.

Q Do you have another copy of it?

A Yes.

Q Mr. Carruthers, what was the 1985 land use plan?

A It was a guide for future growth that was developed after completion of land use survey and after the AMA X-ray and prognosis report. The area was expanded to cover the village of Corrales in Sandoval County and it included quite a bit more land than the AMA study did.

It was about 212,000 acres altogether, I believe. The 1985 land use plan was done to coordinate with the transportation planning effort that was under way at that time.

Q Just so we are all clear. The study area of the 1985 land use plan was different than the studied area of the 1962 plan, is that correct?

A It was much larger.

Q Mr. Carruthers, this is a photo mosaic of the Albuquerque area taken in the year 1967. Can you show us on this map what the boundaries were of the studied area used in the 1985 land use plan?

MR. FLEMING: Your Honor, could we find out what they called the study area?

THE COURT: It is Exhibit 60.

MR. FLEMING: Was it Albuquerque or Albuquerque metropolitan area?

THE COURT: What's the name of it? I gather 1985 land use plan, Albuquerque, New Mexico, 1964 adopted by local officials.

MR. FLEMING: The city of Albuquerque?

THE WITNESS: It was called the Albuquerque transportation study area.

THE COURT: You are referring to Exhibit 60, are you not, Mr. Kaufman?

MR. KAUFMAN: Yes, your Honor.

MS. HYNES: I assume Mr. Fleming will have an opportunity to cross examine. He keeps interrupting.

THE COURT: Ms. Hynes, Mr. Kaufman is handling this witness.

Q Mr. Carruthers, can you outline the boundaries of the study area used in the 1985 land use plan?

A The area, the north boundary ran along the county line and then took in the village of Corrales within Sandoval County back down to the county line over here. I am sorry, down to the Indian reservation boundary over here and then it went up to, included all of the Elena Gallegos grant land, to the crest of the Sianaia and then back along this south boundary of the grant area to this line and then south -- I am sorry, then along the south boundary I believe all the way down straight across (indicating).

Then on the west side it went over to a line here near the volcanos on the west side of the city.

Q Roughly a straight line even with these volcanos?

A More or less. It is not exactly straight.

THE COURT: Can't we use a nice red pen and outline on that Exhibit 1074-A what portion of 1074-A is covered by Exhibit 60?

MR. KAUFMAN: Your Honor, I will be asking the witness to mark this exhibit up in comparison with the way he marked up the one for 1959 to show the growth.

THE COURT: Wasn't the mark-up on 1073-A with the red pen the area covered by Exhibit 41?

MR. KAUFMAN: No, your Honor, the witness marked on 1073-B the extent of development in Albuquerque as of

1959. He did not mark out the boundaries of the study area.

THE COURT: 1073-B? There is no 1073-B.

MR. KAUFMAN: I am sorry, on 1073-A, your Honor, the witness marked out the boundaries of the developed parts of Albuquerque as of that time.

THECOURT: When you say Albuquerque, you mean the city limits of Albuquerque, is that it?

MR. KAUFMAN: No, I mean he marked out the boundaries of the extent of actual development.

THE COURT: That means it is within the city limits. It can't be Albuquerque if it is outside the city limits, can it? It has another name according to your prior witness.

Q Mr. Carruthers, let's just go back for a minute. The areas that you have marked out in red on this 1959 photo. What do these areas -- the areas within the red markings, what do they refer to?

A To existing development, the boundary of existing development at that time.

Q Is all of that within the municipal city limits of Albuquerque?

A In the northeast, yes.

Q With respect to the northwest, is that all within the municipal limits of Albuquerque?

A No, it is not.

Q Do you know where the municipal city limits were in 1959?

A The city limits ended on the west side I believe about in here (indicating), where this part of the line is.

Q So the development in the southwest part would be roughly within the city limits?

A No, in the southwest the city limits run right along this area here (indicating). Most of the south valley is outside the sity limits.

Q That would be true also for the northwest part of the valley?

A That's right.

THE COURT: All right.

Now you are dealing with 1074-A, is that it?

MR. KAUFMAN: Yes, your Honor. I will shortly be asking the witness to do the same thing with 1074-A as he did with 1973-A.

Q Mr. Carruthers, the 1985 land use plan, I gather, was a 20 year plan, is that correct?

A That's correct.

THE COURT: Let's not go over everything that's in the record through the prior witness, Mr. Kaufman. We will save a lot of time.

We will have a recess.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

MR. KAUFMAN: May I continue, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, before we delve into the 1985 land use plan, let me show you Government's Exhibit 5 for identification, and ask if you can identify that (handing).

A Yes. It's a tabulation of annexation data prepared by the city planning department extending from the years 1950 to 1975.

Q When you say annexation, what do you mean by annexation?

A Land annexed by the city of Albuquerque.

Q Is this a yearly compilation of land that has been annexed by the city of Albuquerque?

A Yes.

MR. KAUFMAN: The government offers Exhibit 5 for identification.

MR. ARKIN: Let me see it.

(Handing to Mr. Arkin.)

MR. ARKIN: No objection.

XXX (Government Exhibit 5 received in evidence.)

MR. KAUFMAN: Your Honor, if I may read just a few of the figures from here.

THE COURT: What is its relevance at this point?

MR. KAUFMAN: Your Honor, I just want to read the size of Albuquerque in acres at times that we have had testimony about.

THE COURT: All right.

(Mr. Kaufman read from Government's Exhibit 5 in evidence to the jury.)

Q Mr. Carruthers, can you tell us what is involved when land is annexed into the city of Albuquerque?

A The city of Albuquerque ordinarily only annexes land upon push by the majority --

THE COURT: We have had all this from another witness. Mr. Pierce explained it all to us yesterday.

Q Mr. Carruthers, I show you what has been marked 202-B for identification, and ask if you can identify it (handing).

A That's a historical map of annexations by the city of Albuquerque.

Q Was this prepared by your Albuquerque planning department?

A Yes, it was.

MR. KAUFMAN: The government offers 202-B.

MR. ARKIN: Do you intend to project this?

MR. KAUFMAN: Yes.

(Pause.)

MR. ARKIN: No objection.

MR. FLEMING: Mr. Carruthers, is this the same as or smaller than what you have defined as the Albuquerque metropolitan area?

THE WITNESS: It's smaller than.

MR. FLEMING: Smaller than.

Is there anything on this that indicates the limits of what you have defined as Albuquerque metropolitan area?

THE WITNESS: As used in the 1960 or 1985 land use plan, is that what you are referring to?

No, there is not a boundary on that map that shows that.

MR. FLEMING: Does the Albuquerque metropolitan area as you define it constantly expand, also?

THE WITNESS: No.

MR. KAUFMAN: I object to this. This is offered for the city limits of Albuquerque, and this is improper voir dire.

MR. FLEMING: I just want to understand the relevance of this document to the testimony.

THE COURT: We don't know what the testimony is going to be with respect to the document in your hand.

MR. FLEMING: You are sustaining the objection?

THE COURT: Yes.

MR. FLEMING: I have no objection to the document.

THE COURT: I assume he is going to testify now against this document.

XXX (Government's Exhibit No. 202-B was received in evidence.)

Q Mr. Carruthers, does this transparency, we will call it, reflect the areas of land that have been annexed by the city of Albuquerque in different time periods?

A Yes. It identifies the land that was annexed prior to 1950 and then from 1950 to 1960 on and from --

THE COURT: Wait, wait.

Is there any objection to this?

MR. ARKIN: I did not object to that document.

THE COURT: That is in.

MR. ARKIN: That document is in, yes.

I shouldn't say document.

THE COURT: Put it on so we can all see what he is talking about.

(Pause.)

THE COURT: I gather you are going to have to step down, unless you have good eyesight.

THE WITNESS: I can see it.

THE COURT: All right.

Q Can you identify for us what the transparancy shows?

A The transparency shows the land that was within the city of Albuquerque at different periods.

The tan colored area is what was inside the city limits in 1950 and annexed prior to 1950.

The darker green color is the area annexed between 1950 and 1960.

The lighter green color is the area annexed between 1960 and 1970.

And the lavendar color is annexed between 1970 and 1976.

Q Just so we have our bearings on this map with respect to the photographs, am I correct that I am pointing to the Rio Grande River at this point (indicating)?

A Yes.

Q And the railroad tracks would be approximately here (indicating)?

A That's correct.

Q And Central Avenue here (indicating)?

A Yes.

Q So this would be the northeast quadrant (indicating)?

A Yes, sir, that's correct.

Q This would be the southeast quadrant?

A That's right.

Q Southwest and northwest, is that correct (indicating)?

A Yes.

Q The road which you used on the 1959 mosaic photograph as Montgomery Road, is that this road right here (indicating)?

A Yes, it is.

Q I don't know if you can read it from there, but the road that you identified on that 1959 mosaic on the eastern boundary being Juan Tabo, is that this road right here (indicating)?

A Yes, it is.

Q The area which you identified on the 1959 mosaic as being the Elena Gallegos grant, is that approximately in this area in here (indicating)?

A Yes.

Q On this map, the area that you identified as North Albuquerque Acres, is that this platted-in portion here (indicating)?

A Yes.

THE COURT: Let's go back to that grant.

What do you call it?

MR. KAUFMAN: This section is North Albuquerque Acres.

THE COURT: No, I mean the one below it.

MR. KAUFMAN: The Elena Gallegos grant, is that correct?

THE COURT: Is this also known as Sims' property?

THE WITNESS: Yes.

THE COURT: Why don't you use the Sims' property, because thatis the name used by the prior witness in describing that area.

MR. KAUFMAN: Fine.

(Pause.)

Q Mr. Carruthers, directing your attention back to the 1985 land use plan, can you tell us what population projections were made in connection with this report, directing your attention to page 8?

A Yes.

The Stanley Brasher projections were also used in preparation of this report.

The high series figure for the study period in the report, that is, to 1985, adjusted to the Albuquerque transportation study area, which is the study area of this report, is 825,000 people.

Q And that was the high series, is that correct?

A That's right.

Q Was the reason for using the high series in this report the same as why the high series was used in the 1962 report?

A Yes.

THE COURT: That 825,000 population is 1985, is that right?

THE WITNESS: That's right.

(Continued on next page.)

4B

Q Mr. Carruthers, did the 1985 land use plan include a map which showed the existing land areas as of the time of the report?

A Yes.

MR. KAUFMAN: May this be marked as 60-A for identification.

(Government Exhibit 60-A marked for identification)

xx

Q Mr. Carruthers, I show you Government's Exhibit 60-A for identification, and ask if you can identify that (handing)

A Yes.

This is the generalized existing land use map from the 1985 land use plan.

Q Can you explain to us what you mean by generalized existing land use map?

A It shows the general areas of development in the Albuquerque area at the time when this report was prepared, from October 1962 to June 1963.

Q Does your copy of the report also include this map?

A I do not have that map.

Q Did the 1985 land use plan also include a map projecting what the land use would be for 1985?

A Yes, it did.

MR. KAUFMAN: May this be marked 60-B.

(Government Exhibit 60-B marked for identification) xx

Q Showing you what has been marked as Government Exhibit 60-B for identification, I ask if you can identify this (handing).

A This is the map of the 1985 land use plan.

THE COURT: That means what you thought was going to happen in 1985?

THE WITNESS: That's right.

MR. KAUFMAN: The government offers 60-A and 60-B.

THE COURT: Mr. Arkin?

MR. ARKIN: As to 60-A, no objection.

(Government Exhibit 60-A received in evidence) xx

MR. ARKIN: No objection as to 60-B.

THE COURT: All right.

(Government Exhibit 60-B received in evidence) xx

MR. KAUFMAN: Your Honor, at this time I would like to make the representation to the jury that we discussed earlier in connection with this report.

THE COURT: I will take it over here.

(At the side bar)

MR. KAUFMAN: Your Honor, at this time --

THE COURT: Keep your voice low.

MR. KAUFMAN: I would like to make a representation to the jury at this time that this was a report which was in the company's possession.

THE COURT: Okay.

Ms. Thompson nods her head in the affirmative.

MR. KAUFMAN: Your Honor, I believe we agreed I would say in the possession of AMREP and Rio Rancho Estates.

MS. THOMPSON: Right.

THE COURT: That's right, the two corporations.

MR. FLEMING: And your Honor is going to give an instruction as to the individuals.

THE COURT: Not binding as yet.

MR. FLEMING: You don't have to go that far.

(In open court)

MR. KAUFMAN: If I may, your Honor.

THE COURT: All right.

MR. KAUFMAN: This report, the 1985 land use plan, issued in February 1964, was a report that was in the possession of AMREP Corporation and Rio Rancho Estates, Inc.

THE COURT: Also tell the jury that these documents are admitted solely against the two corporate defendants and is admitted subject to connection, that means it is not binding on any other defendant, as of this time.

Do you include 60A and 60-B in that representation?

Those are the maps.

MR. KAUFMAN: Yes, with respect to 60-B, your Honor.

CONTINUED DIRECT EXAMINATION

X BY MR. KAUFMAN:

Q Mr. Carruthers, directing your attention to page 3 of the report, that is labeled "Prospects and Summary," is that correct?

A Yes.

Q Can you tell us what that section was?

A Well, that section talked about what Albuquerque should plan for in terms of population. It also goes on to indicate the growth expectations in the various parts of the city, specifically, the northeast and southeast heights, the Elena Gallegos grant or the Sims property -- it states that that will expand the northeast heights residential area.

The report also contains a statement about the west side, including the south valley.

Q Was this page 3 basically the summary of the findings of this report?

A Yes.

MR. FLEMING: Can the witness finish his answer.

THE COURT: He was interrupted by Mr. Kaufman. Do you want it read back to you?

MR. FLEMING: No. I would like him to complete his answer, if he had not completed it, about what the report said about the west side.

MR. KAUFMAN: Your Honor, I intend to read it. It may be easier that way.

THE COURT: Are you going to read the whole page?

MR. KAUFMAN: I am going to read numbers 1 and 2, which I believe are the relevant portions.

THE COURT: All right.

(Mr. Kaufman read from Government Exhibit 60 in evidence to the jury)

Q Mr. Carruthers, utilizing these maps, 60-A and 60-B, can you show us what the report was referring to in terms of the development both of the northeast, the west and the south valley in terms of existing land use in 1964 and projected land use in 1985?

THE COURT: It speaks for itself, doesn't it?

You take 1964 and you take 60-B and 60-B shows what the report has projected.

Is that right, Mr. Carruthers?

THE WITNESS: Yes.

THE COURT: All right. Next question.

Q On 60-B, Mr. Carruthers, can you explain the color coding on here so we understand what these colors mean?

THE COURT: Are they on the map itself, Mr. Carruthers?

THE WITNESS: Yes.

THE COURT: The coding is on the map itself. Next question.

MR. KAUFMAN: If I may show it to the jury, your Honor.

THE COURT: They can look at it during the recess tomorrow morning.

MR. KAUFMAN: Okay.

Q Mr. Carruthers, did the report go on to review different geographical areas in the study area?

A Yes.

MR. KAUFMAN: If I may read from pages 16 and 17, your Honor.

(Mr. Kaufman read from Government Exhibit 60 in evidence to the jury)

Q Mr. Carruthers, I gather the 1985 land use plan did not anticipate the necessity of development on north Albuquerque Acres, is that correct?

A That's correct.

Q Has there been development on north Albuquerque Acres?

A Yes, there has, on a portion of it.

THE COURT: Pardon me.

You know, Mr. Pierce testified this morning.

MR. KAUFMAN: Your Honor, I don't think he testified with respect to --

THE COURT: He said there was development in north Albuquerque Acres I think in response to Mr. Arkin's questioning.

Q Mr. Carruthers, do you know the names of any of the developments on north Albuquerque Acres?

A Yes. The Loma Del Norte subdivision is in north Albuquerque Acres.

Q Who is the developer of Loma Del Norte?

A Dale Bellemah.

Q Is that the same Dale Bellemah that is developing Taylor Rancho on the west side?

A Yes.

Q Directing your attention to page 24 of the 1985 land use plan.

Did the plan include a study of the vacant land within the study area?

A Was that a question?

Q Yes.

A Yes.

MR. KAUFMAN: Your Honor, if I may read a portion of page 24.

THE COURT: All right.

(Mr. Kaufman read from Government Exhibit 60 in evidence to the jury)

MR. KAUFMAN: If I may just read a small portion from page 32, your Honor, under No. 12.

(Mr. Kaufman read from Government Exhibit 60 in evidence to the jury)

end t

5 pm

BY MR. KAUFMAN:

Q Mr. Carruthers, in planning for the projected population of 825,000 by the year 1985, was Rio Rancho Estates considered as being necessary to accommodate any part of that population?

MR. ARKIN: Objection.

THE COURT: The report, I assume, will indicate it.

MR. ARKIN: If he is asking what the report is, fine. That wasn't the question.

THE COURT: Does the report indicate that Rio Rancho --

MR. ARKIN: That report does not deal with the area in which Rio Rancho is situated, your Honor.

THE COURT: Objection sustained.

Q I would like to read to you, Mr. Carruthers, three sentences from Government's Exhibit 315 in evidence.

"There is only one direction in which the city can grown, through the northwest mesa where Rio Rancho Estates is located. The city planners of Albuquerque give an awful lot of attention to Rio Rancho Estates because this is where the city must grow to, grow into, grow out of."

Is that an accurate statement with respect to the city planners of Albuquerque in 1965?

MR. FLEMING: Objection.

THE COURT: Overruled.

A No. No, it is not.

Q Did Albuquerque have only one direction in which it could grow?

MR. FLEMING: Object to that.

THE COURT: Overruled.

A No.

Q Did the city planners of Albuquerque give an awful lot of attention to Rio Rancho Estates?

A No.

Q Does the Albuquerque planning department have planning jurisdiction over Rio Rancho Estates?

A The city of Albuquerque has never exercised its full five mile planning jurisdiction outside the city limits.

Q Mr. Carruthers, identify the five mile planning jurisdiction for us.

A Under the state law the city has planning jurisdiction extending five miles outside and beyond the city limits. A portion of that crosses into Sandoval County in the area of Rio Rancho. It catches a very small portion. The city has never exercised planning jurisdiction across county lines.

Q Has the city ever attempted to exercise planning jurisdiction across county lines?

A No.

Q Has a very recent attempt been made in that regard?

A There is litigation underway by the Town of Corrales Heights relating to that question.

Q Was that the first attempt made to cross county lines?

A Yes.

Q When was that?

A Within the last two years.

Q Mr. Carruthers, have you ever heard of a firm called Harmon, O'Donnell & Henninger?

A Yes.

Q What is that?

MR. FLEMING: I object to this, your Honor.

I am sorry, I object on relevance and competence.

THE COURT: Whether he knows who they are. YOu cannot object to that yet.

MR. FLEMING: He already said he knew who they were. Now he was asked what they were. I assume the question would go further and it is incompetent and irrelevant from this witness.

MR. KAUFMAN: I think the relevance will become clear, your Honor.

THE COURT: I think you had better do it at the side bar in view of Mr. Fleming's objection.

(At the side bar)

THE COURT: Yes.

MR. KAUFMAN: Your HOnor, the witness will testify that Harmon, O'Donnell & Henninger was a land planning firm. That they have done a lot of work in Albuquerque.

I will ask him if he knows an individual Ralph Avellant. He will say yes. He will say he worked for Harmon, O'Donnell & Henninger. He will say in approximately 1965 or 1966 Ralph Avellant came to Albuquerque in connection with doing work for Rio Rancho Estates and Ralph Avellant came to see George Carruthers in his official capacity in connection with the work that Mr. Avellant was doing for Rio Rancho Estates.

That is clearly relevant especially when Mr. Avellant testifies and his report comes into evidence it shows, among other things, that one of the places that Mr. Avellant went to when doing work for Rio Rancho Estates was the Albuquerque Planning Department.

THE COURT: Mr. Fleming.

MR. FLEMING: It is all hearsay from this witness, if your Honor please.

THE COURT: This is an independent contractor hired by Rio Rancho. It doesn't bind them.

MR. KAUFMAN: Your Honor, this witness will not be testifying what type of work Mr. Avellant did for Rio Rancho Estates. He will simply be saying that Mr. Avellant came to him.

THE COURT: What are you going to use it for?

MR. KAUFMAN: Your Honor, it is just --

THE COURT: Objection sustained.

(In open court)

MR. KAUFMAN: May I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MR. FLEMING: Your Honor, I am sorry, I don't want to interrupt, but I don't want to be untimely. I do have an application I would like to make at 5:00 o'clock with regard to the use of Exhibit 315.

THE COURT: Go ahead.

MR. FLEMING: I am sorry, your Honor, could we approach the bench now.

THE COURT: Yes. Maybe I will excuse you early tonight. See you at 10:00 o'clock tomorrow morning.

(Jury left the courtroom)

THE COURT: Yes.

MR. FLEMING: Your Honor, Mr. Kaufman read from what I believe he identified as Exhibit 315, which sounded to me as if it were a transcript of a presentation at a dinner.

I am advised that it is a 1965 transcript and I recall no evidence that it was ever used at a dinner.

In the absence of any evidence that it was ever used at a dinner, my understanding is twofold.

One, that it was taken by your Honor subject to connection with a victim witness.

Two, I recall no evidence that 315 was ever used at a dinner.

Three, I know of no evidence that representations with regard to city planners, et cetera are a part of any other script other than 315.

If I am correct in all those recollections, I am asking for a mistrial.

THE COURT: 315, according to my notes, was admitted on November 10th.

MR. ARKIN: Your Honor, I have the transcript at page 700. Would that be useful to your Honor?

THE COURT: No, I think my notes are at this point at least.

Mr. Mandel testified that this presentation was used for the first four months at dinner parties.

MR. FLEMING: In 1965, that is correct, your Honor.

THE COURT: Then I gather that it was changed to 316 and I gather that 316 was used for six months starting in March of 1966. That was then changed into 317 and it was agreed that 317 continued in roughly the same form without change in substance for the rest of the period.

MR. FLEMING: Your notes are absolutely correct up to 317. I cannot get that far in the transcript, your Honor.

THE COURT: We are not worried about that. We are only worried about 315.

MR. FLEMING: 315 at page 699 was used for a four month period of time.

We objected. I stated at page 700, "I know your Honor has already received it. My objection really is that I request it be received subject to connection."

THE COURT: It could not have been used for any victim witness we have heard so far.

MR. FLEMING: I cannot connect in my own mind, if your Honor please. I also find the use of this script in this context particular prejudicial and pernicious where a scheme, consistent activity in 1961 to 1975, is alleged.

The evidence, as your Honor has just outlined it, makes it very clear that this script was used for four months during that period of time.

THE COURT: Mr. Kaufman.

MR. KAUFMAN: Yes, your Honor, I will later on be using a piece of the defendants own material that was used for a much longer period of time than four months so I don't think that is a valid objection. I will be using "This is My Land" which talks about the only direction that Albuquerque --

THE COURT: You used this with this witness.

MR. KAUFMAN: I will use "This is My Land" as well with this witness.

THE COURT: The objection is being made to 315.

MR. KAUFMAN: I don't think the objection

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properly lies. The testimony was that this script was used at dinner presentations for a certain period and that is a period within the time period of the scheme.

We are endeavoring to prove that it was a false statement. The statements that were contained in later scripts with respect to Albuquerque's growth and the only direction that it can grow are basically the same statements.

THE COURT: Wait, wait. You made a point that Mr. Carruthers, being the city planning commissioner or having worked in the office for years, was misrepresented specifically by the reference in Exhibit 315.

MR. KAUFMAN: That is correct, your Honor. He was.

THE COURT: That is what they are objecting to.

MR. KAUFMAN: That was part of the scheme. If it was for four months, that is what was said during that four month period.

THE COURT: In 1965 or '66?

MR. KAUFMAN: Correct, your Honor.

THE COURT: And was dropped and never used thereafter?

MR. FLEMING: They have produced no victim,

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as they are under an obligation to do, in order to make this script admissible other than subject to connection.

MR. KAUFMAN: Your Honor, what was changed, if you compare it, say, with "This is My Land," the language becomes "Experts say the only way Albuquerque can grow is in the direction of Rio Rancho Estates."

THE COURT: That is a big difference.

MR. KAUFMAN: I am going to refer to that later on with this witness.

THE COURT: Don't you understand, he wants me to tell the jury that you strike 315 because of the reference to something that was said in 1966 that was never said to any victim.

MR. KAUFMAN: I understand that is what he is saying, but it is a part of the scheme and I don't think it should be stricken.

THE COURT: Ms. Hynes, sit down. I am a little fed up with three assistants always jumping up on one point.

Go ahead, Mr. Kaufman.

MR. KAUFMAN: Your Honor, the fact that it was used for six months doesn't change the fact that this was a statement used at dinner presentations during the time period of the scheme and the government is entitled to show how the scheme developed over time.

In the early part of the scheme they were saying that the planning department has this jurisdiction over Rio Rancho Estates or the planning department says that Albuquerque can only grow to the northwest.

THE COURT: The scheme is that someone was defrauded by false statements.

MR. KAUFMAN: Your Honor, the law is clear --

THE COURT: So far the only witnesses --and there were more than just victim or count witnesses here -- nobody has said this statement was ever made to them.

MR. KAUFMAN: Your Honor, the law is clear that we do not have to produce a witness who says he was defrauded. The proof of the statements goes to the defendants' intent.

THE COURT: You don't listen very well, do you, Mr. Kaufman;

The scheme is making false statements.

So far I have heard no witness say that he ever heard such a false statement.

MR. KAUFMAN: Mr. Mandel said this is the script that was used at every dinner presentation and that is proof that it was said.

THE COURT: Now, if the scheme changes,

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so this is never used again from 1966 on and the scheme that is used to sell land and pursuant to which scheme the count victims mailed their piece of literature, their payment, do you say that hooks these defendants?

MR. KAUFMAN: I say --

THE COURT: Listen very carefully.

Let's assume you have a scheme that exists in 1965 and one half of that scheme is thrown out. The scheme being false statements.

I am not talking about reliance, Mr. Kaufman. I am speaking about false statements because if there are no false statements there is no scheme, you will admit that, won't you?

MR. KAUFMAN: Well, if there is nothing false or misleading --

THE COURT: Your indictment describes the scheme as making false statements.

MR. KAUFMAN: I think it says "false and misleading".

THE COURT: Okay, false and misleading statements. That is the scheme. If there were no false and misleading statements there cannot be a scheme, can there?

MR. KAUFMAN: I think we can agree on that.

THE COURT: Great.

Now, we knock out half of what was the false and misleading statements in '66. Don't even tough them, they never make them again.

We only use the second half in '67, '8,'9, '70, '71, '2 and '3. The only witnesses you have put on to prove that scheme and who were pursuant to that scheme mailed a letter only heard the second half, you say the first half comes in?

MR. KAUFMAN: Yes, your Honor, clearly because it goes to the defendants' intent. If during the period of the scheme they are making statements that are false, let's say three statements that are false, that goes to their intent at the time the statement is made.

If later on during the scheme they reduce it down to two false statements --

THE COURT: Supposing they stopped all the false statements.

MR. KAUFMAN: If they stopped all the false statements --

THE COURT: What intent would that leave you with?

MR. KAUFMAN: We would have an argument then with respect to the period of limitations and legal questions like that, but I don't think we are faced with that because the false and misleading representations continued well into the 1970's in this case.

THE COURT: What is your position, Mr. Fleming?

MR. FLEMING: Judge, I am going off my recollection --

THE COURT: Forget the recollection. We are starting fresh.

MR. FLEMING: A deliberate concerted effort was made by the prosecutors in this case to my recollection to introduce tapes through Mandel on the representation that the practice and the representations were the same throughout the 1961 and 1975 period.

Your Honor received them on that basis subject to connection with the testimony of a witness that that statement was made to that witness.

The government made the representation and obtained the admission of those tapes on that basis, that they were the same.

Now, they knew this witness was coming on and they have deliberately used a tape which they know on their own testimony was in use, if at all, for a period of four months in 1965, and they know your Honor received it subject to connection with a purchaser and they have now used it deliberately with this witness not for the representation that Albuquerque would grow only to the northwest, that is a transparent excuse, they used it to ask this witness whether the planning commission was cooperating with Rio Rancho consistent with whatever was said on that four month script.

I say it was deliberate and conscious and I say it was in violation of your Honor's order. I say it was in violation on the basis on which they got your Honor to receive those transcripts in the first place and that a mistrial is required.

Beyond that I say a scheme requires consistent repetitive conduct. If they want to stick on that, that that statement is part of this scheme, then they haven't proven the scheme, and I would ask the Court to dismiss on that theory.

THE COURT: Your theory is that if you have a scheme consisting of ten elements and you drop five, that they cannot convict onthe five?

MR. FLEMING: I say if they can prove consistent use of false representations, that that can amount to a scheme.

THE COURT: Now, if they had ten false representations and they drop three of them during the course of the scheme, does that mean you cannot -- the scheme is changed, a new scheme is created?

MR. FLEMING: I will take the Fifth on that.

THE COURT: I will read the transcript again and rule in the morning. There will be no mistrial, that part you don't get at all.

MS. HYNES: May I ask you to read a brief we submitted when this issue was raised on the tapes and we submitted a brief to your Honor on victim witnesses.

THE COURT: I am familiar with that.

MR. FLEMING: My point is the opposite. That an isolated representation cannot be part of the scheme. That is what I am saying.

Clearly, if they allege ten representations and you knock out five, I take the Fifth Amendment with regard to the other five, but I say an isolated representation cannot be part of the scheme.

I also argue that they proceeded in bad faith with this witness in view of the record and the manner in which they got the Court to receive these tapes in the first place.

MR. KAUFMAN: Mr. Fleming is cavielierly accusing the government of bad faith. It is not the first

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time Mr. Fleming has done it and the government resents it. Nothing was done in this case in bad faith. It is done in good faith and it is perfectly permissible and we resent Mr. Fleming --

THE COURT: There was a representation made that these scripts and movies were the same except for minor changes. That was a representation made by the government.

MR. KAUFMAN: Correct, your Honor.

THE COURT: Now, it cannot be a minor representation if you are relying on a false statement that appeared in one and does not appear in the rest. You would not call that a minor change, would you, if you are going to rely on it to prove your scheme?

MR. KAUFMAN: Your Honor, it is showing the formation of the scheme, the continuation of the scheme and the way these defendants at times during the fifteen year period changed their language around, but, basically, said the same thing in terms, as your Honor said yesterday I believe it was, the crux of this case --

THE COURT: That isn't Mr. Fleming's point. It is not basically saying the same thing. It is asking this witness whether a statement attributed to him or his department is false.

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Now, that is not minor, is it? It is major. You must be asking that question for a purpose because, if it is minor, you wouldn't waste your time.

MR. KAUFMAN: I agree, your Honor, but you have to compare it with the statements made later on by the defendants where instead of talking about the city planning department, they talk in more general terms about experts concluding that Albuquerque can only grow to the northwest.

I later on, to put it in context, intend to ask Mr. Carruthers whether or not that is a true statement, that experts say that Albuquerque can only grow to the northwest so I will be giving an accurate picture of the development of the statements used by the defendants to sell this land.

This is not taken in isolation.

MR. FLEMING: Your Honor, it obviously cannot be the basis for a conviction on any count unless a count witness testifies that he heard it. That is why your Honor received it subject to connection in the first place as they know.

Secondly, on the question of intent, it is probably exculpatory on that question because it was deleted in four months.

What I go back to is the record in this case where it was represented to this Court with regard to those tapes, as to which there was little foundation, that the government would take the position that everything was the same and your Honor took those tapes subject to connection with a purchaser and that was not done with this tape.

They went ahead and used it with this witness, not to prove growth to the northwest, but to go through that business about the planning commission cooperating with Rio Rancho.

The question was asked four or five different ways.

MR. WEIDNER: If I may add to what Mr. Fleming has said, the problem is particularly important as to Mr. Friend, who didn't even arrive on the scene for some five years, until after this representation, if it was made at all, was made and I don't see how the government can property stand there and try to convict Mr. Friend.

THE COURT: I answered that argument of yours ad nauseam.

Mr. Friend being in or out of this case and being bound by what went before is my problem. If I hold that he is not bound by what went before but has to be brought in by independent proof while he was there, that is the issue.

If I find that there is sufficient evidence, then he is bound by this.

If I find there is insufficient evidence, he is dismissed at the end of the government's case. We have been over this ten times. I have made my position absolutely clear on the record.

That is true of any scheme or conspiracy. You can join at any time and you are bound by what happened before.

Now, if I find from the evidence that there is sufficient there to show that Mr. Friend was a member of such a scheme, he is bound by this.

Now that takes care of you for the last time, don't raise that, will you? Ten times you have done it. Ten times I have explained it to you. I don't want to hear it again.

MS. HYNES: Your Honor, I just want to make a statement for the record on Mr. Fleming's representation that the tapes came in subject to connection.

The government offered the tapes. Mr. Fleming made the argument that we had to produce a victim who actually heard the tape.

The government took the position we did not have to produce a witness who actually heard the tape. We agreed that the tape had to be used, but that presentation had to have been made, but not that we had to produce somebody who was actually sitting at that dinner party and heard that presentation.

We submitted a brief on that the next morning--

THE COURT: That isn't the way it came in, Ms. Hynes. It came in on the basis that a witness could say, I heard -- first of all, Mandel said that everything was done in haec verba.

There was not one variation at any dinner party from the script. Not even the jokes were changed. If you changed the jokes you were fired.

They came in on the basis that if a witness said, "I heard a presentation," that was sufficient to mean he heard that presentation which was either the one in existence at the time they heard it, but, if not, it was a similar one that did not vary in a material respect.

That is the government's representation and I have told that to you many a time at the side bar, that was the basis upon which they came in.

MS.HYNES: That is not what Mr. Fleming's point was and that is not what I was addressing myself to.

THE COURT: That is what Mr. Fleming's point is.

MR. FLEMING: It is at page 700, your Honor, in at least one instance.

(Adjourned to Thursday, December 9, 1976, at 10:00 o'clock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Albert I. Pierce (Resumed)		4187	4213	4282
George L. Carruthers	4307			

EXHIBIT INDEX

Government	Identification	In Evidence
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1108	4265	
1109	4272	
1110	4278	
41		4312
5		4341
202-B		4344
60-A	4349	4350
60-B	4350	4350

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 9, 1976
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: All right. We have some unfinished business from last night on Mr. Fleming's motion for a mistrial, which I deny.

There was a motion to strike the testimony of the witness regarding Exhibit 315, and that is denied.

The testimony can come in on the basis that it shows the intent of these defendants in devising a scheme.

It is not necessary, as I have said frequently, that somebody actually be defrauded, but it has to be shown that the scheme, the purpose to defraud, existed.

In view of the fact that we have had a number of witnesses already who have testified that they have heard the statements -- they have gone forward, they said they relied on them, including the main ones in issue here--

I will allow this particular testimony in on showing the intent of the defendants.

Do you have something else, Mr. Kaufman?

MR. KAUFMAN: Very briefly, your Honor.

Mr. Carruthers just told me he was up most of the night fairly ill and he still feels a little under the weather this morning.

I just wanted to bring that to your Honor's attention. We may have to take a sudden recess during the day in case he has a recurrence of this.

THE COURT: You mean a man from New Mexico got La Tourista in New York?

MR. KAUFMAN: It seems that way. He can't stand the absence of Mexican food, I guess.

THE COURT: You can tell him any time he needs a recess to just indicate it.

MR. KAUFMAN: I told him that, your Honor.

THE COURT: I suggest you get the exhibits out of the way so the jury can get out of the box.

(Jury present)

GEORGE L. CARRUTHERS, resumed.

THE COURT: Ladies and gentlemen of the jury, you have been sitting here very patiently and quietly for the last six weeks and, as you know, this trial has gone on for some time.

By presidential proclamation, court is closed on Friday, the 24th of December, and Friday, the 31st of December, and I thought in view of the length of this trial we ought to give you a little more Christmas vacation than that, so that we will not work on Thursday, the 23rd, nor on Monday, the 27th.

That means we will go through Wednesday, the 22nd at 5:00 o'clock, and we will return on Tuesday, the 28th, at 10:00 o'clock.

All right, you may continue your direct examination.

MR. KAUFMAN: Thank you, your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. KAUFMAN:

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Q Mr. Carruthers, Government Exhibit 1074-A is the photographic mosaic of the Albuquerque area in 1967.

Does Rio Rancho Estates appear on this photograph?

A Yes, it does.

Q And can you point out to us where it is?

A Rio Rancho Estates is here (indicating).

Q And the southern boundary line being where?

A Right here (indicating).

Q Can you jut trace the boundaries of it with the pointer?

A (Witness complies)

Q Mr. Carruthers, what I would like you to do is do the same thing as you have done with the 1959 photograph in terms of the current state of development in the Albuquerque area with the 1967 photograph.

Can you show us the current state of development, and as you do it tell us how that compared with the situation as it was in 1959?

Do you understand that?

A Yes.

THE COURT: Why don't you first take the red marker and draw the outline and then you can indicate the two pictures.

(Pause)

Q Can you circle that portion of Rio Rancho Estates?

A Yes (indicating).

Q Now let's move over to the east side of the river.

MR. ARKIN: Mr. Kaufman, can you keep your voice up so we might hear you back here?

MR. KAUFMAN: All right.

A (Witness complies with this request)

(Pause)

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Q If you will, Mr. Carruthers, if you can just stand here to the side so the ladies and gentlemen of the jury can see.

Starting on the west side, can you show us the difference in development between 1959 and 1967?

A In the southwest quadrant there was a little bit more development here just south of Central Avenue than there had been previously.

Q What type of development was that?

A Primarily residential right here in this area.

The area up here was expanded slightly with the new high school. I believe there is more residential --

THE COURT: Wait. When you say the area up here, the court reporter doesn't know what you are talking about. You are going to have to use a geographical designation.

A The area north of Central Avenue on the west mesa was expanded slightly with a new high school at Fortuna Road and some residential developments, additional residential developments south of the interstate route of I-40 right here, which was not quite completed at that time.

MR. ARKIN: Might the witness be instructed to say what the development was and not to characterize it.

THE COURT: It is outlined by a red line. You can compare one with the other. He is merely explaining it.

Do you want to do it house by house?

MR. ARKIN: No, he can simply say there was a high school or 200 houses or whatever.

THE COURT: I don't know whether he knows whether there were 200 houses or 100 houses or 50 houses. He says it was slightly more developed then.

MR. ARKIN: The difficulty is that he says slightly and we don't know the number of houses and it is very hard to compare.

THE COURT: You can do it on cross examination if you think it is necessary.

Q Mr. Carruthers, before you go any further north up the mesa, let me point you --

THE COURT: Don't suggest anything to the witness. You have asked a question and that is to describe how the 1967 map differs from the 1959 map. Let him answer that.

Without interruption.

Q Continue.

A In this area there was partially developed residential, it was not fully developed at this time.

There was no change along the west side of the river except for, I believe, a little expansion of the University of Albuquerque campus and then there was a small subdivision that was beginning to develop here just north of the -- about a mile north of the University of Albuquerque campus.

No other development on the west side until you get up to Paradise Hills and the golf course was in at Paradise Hills and there was residential development in the area called Rio Vista Estates and also in the country club estates area right around the golf course.

In the southwest quadrant there were the beginnings of the Snow Vista or Westgate Heights area, which is this area right here (indicating).

Q On what land is that located?

A Single family residential.

Atrisco grant lands.

Going on up, the development extended to the edge of the valley along the west side as it had before with this area developed in Rio Rancho Estates on this photograph.

Then going over to the east side, the limit of development was pretty much the same along the east edge of the valley --

MR. FLEMING: If your Honor please, that is the east side of the river, not the east side of the railroad tracks.

MR. KAUFMAN: I believe the witness said the east side of the valley.

THE COURT: Do you want to repeat it.

MR. FLEMING: We are dealing in quadrants.

THE WITNESS: This is in the northeast quadrant.

THE COURT: It is in the northeast quadrant and it has to be east of the railroad tracks by definition.

MR. FLEMING: That is right.

A (Continuing)

The breaking point of development there is the edge of the valley where the edge of the mesa starts.

There were some industrial developments in the vicinity of Los Angeles, there is a power plant and a gypsum plant in this area.

Also there was a cemetery and a few industrial uses along the interstate route, which is I-25 here.

T here is another cemetery in this location and a small airport there (indicating).

Q On what property is that located?

A This is all in north Albuquerque Acres. This area here (indicating).

Q Continue.

A Going south, there were some gravel extraction operations going on in the sand hills along the east edge of the valley, but the development pattern was still pretty much on the valley floor.

There was a little change in development along Montgomery when you get over to the vicinity of -- it looks like San Mateo.

There was a new high school in this location at San Mateo and Montgomery. A private golf course in this area.

Residential development south of the new city golf course, the Arroya del Oso golf course.

This is in the Sims property, the development in this area is alos in the Sims property.

Going on east there was a little bit more development up closer to Montgomery Boulevard, which runs through this area and then beyond Montgomery Boulevard from Wyoming Boulevard to Eubank. Wyoming is this street.

Q Can you label Montgomery as you did on the '59 map so we have a point of reference.

A (Witness complies)

Q Label Juan Tabo as you did on the other map.

A (Witness complies)

The development extended over to within a quarter of a mile of Juan Tabo and then down to --

MR. ARKIN: Within a quarter mile of what?

THE WITNESS: Juan Tabo Boulevard.

A Then south to Candelaria and back up around the Holiday Park subdivision, which extended over to almost Tramway Boulevard and then back down around the small single family subdivision in this area, which is south of Candelaria.

Then more or less along Juan Tabo Road and back around partially developed area in this location which is the extension of Menaul Boulevard.

Then south around that single family residential development back to Juan Tabo and around another single family residential development and a new high school at Lomas Boulevard.

Then back to Juan Tabo and around a small subdivision that was partially developed on this photograph right near I-40.

Then south across I-40 along Central Avenue, a pretty fair amount of vacant land in this area, with some scattered commercial development along Central Avenue back to the government land here (indicating), Siandia

Corporation, federal land.

Q Mr. Carruthers, on the 1959 map we used Montgomery as this landmark running east-west and we used Juan Jabo as a landmark running north-south.

In 1959 there was no development north of Montgomery and no development east of Juah Tabo.

Can you just describe for us on the '67 map how those landmarks relate in terms of development with the 1959 photograph?

A Montgomery Boulevard runs right through here. There is a bit more residential development and the golf course north of it then there had been over there.

In total this is 160 acres here and I would guess a bit more than that, roughly 200 acres in this area undeveloped and then going down Juah Tabo there is 320 acres in the Holiday Park subdivision and then another almost 160 acres developed in this area or beginning to be developed (indicating).

Then the residential subdivision east of Juan Tabo in this area is, oh, that comprises about 240 acres, I would say, and then another small 80 acre subdivision and high school. Another one down here occupying almost 160 acres (indicating).

Q Again on the '59 photograph there is land south of Montgomery extending out to Juan Tabo that is undeveloped.

Can you show us on the '67 map what has happened to that land?

A Part of that land is still vacant. Almost 320 acre parcel in this area is still vacant and on this photograph running from Wyoming to Eubank immediately south of Montgomery Boulevard.

There are several 40 acre parcels and some vacant land all along both sides of Montgomery Boulevard vacant, predominantly vacant for the full length there until you get over to this subdivision between Wyoming and Eubank on the north side.

In the '59 photo there was no development east of Juan Tabo and these developments have occurred since then (indicating).

Q What is the next north-south line that appears right here east of which there appears to be no development?

A There is the beginnings of a small development right here in the foothills called Glenwood Hills. That road is Tramway Boulevard. This subdivision extends up here into the Siandia Foothills part way.

Q Can you put a T here for Tramway Boulevard?

(Witness complies.)

Q Other than Glenwood Hills, is there any other development east of Tramway Boulevard?

A No. There was a power substation here and a water tank up here, that's all.

Q Moving over to the west side once more, there appear to be some roads in this section right here (indicating). Can you tell us what that is in that area?

A This area is what is referred to as Volcano Cliffs and they had started to grade their roads both above the lava flow escarpment, which is the dark line on the air photo, and below it.

Q Can you circle the Volcano Cliffs section?

(Witness complies.)

A The area shown on this map?

Q Just in terms of where there appear to be roads.

(Witness complies.)

Q As of 1967, was there any development on Volcano Cliffs?

A The road in the first unit of Volcano Cliffs were in this location and there were, I would estimate, about ten houses, eight to ten houses started in this area.

Q Am I correct that you said that Volcano Cliffs property is on both the mesa and the lava escarpment, is that correct?

A Yes.

Q One more question, Mr. Carruthers. On the '59 photo there appear to be square block areas in the Northeast Heights section without development. Can you compare these areas on the '59 photo with the 1967 photo?

A Yes. There were 160 acres vacant in this location which on the later photograph has development on the northeast 40 acres of it, which is Corronado Shopping Center.

The rest is almost entirely vacant. There was one building, an apartment building on the south edge of that total tract.

Then opposite on the other side of Louisiana Boulevard there was almost an equivalent sized piece vacant. This photograph was taken before the interstate route was built through this natural arroyo.

The property in this location on this photograph is occupied by Winrock Shopping Center, which has developed here (indicating).

Going farther east at Wyoming Boulevard, there is 160 acres vacant in this location. It looks as if there is a little bit of development right there.

That was subsequently developed into the Bell-Haven subdivision right here (indicating).

On both photographs there are vacant parcels along the interstate route here.

Q Mr. Carruthers, referring to Exhibit 5, can you tell us what the size of Albuquerque was in 1967 in terms of acreage?

MR. FLEMING: May I inquire, your Honor, the city limits?

THE WITNESS: Yes.

MR. FLEMING: Is this city limits we are talking about now?

THE COURT: I gather so.

THE WITNESS: Yes, it is.

A The city limits in 1967 contained 50,265 acres.

Q Mr. Carruthers, I would like to show you page 9 of Exhibit 384 in evidence, the brochure "This is My Land." Have you seen this page before and reviewed it?

A Yes, I have.

THE COURT: What exhibit is this?

MR. KAUFMAN: 384, your Honor.

Q Are there contained on page 9 different real estate transactions?

A Yes.

MR. KAUFMAN: Your Honor, if I may just read --

MR. ARKIN: If your Honor please, we object to this line of questioning. We would like a side bar on it.

THE COURT: All right.

(At the side bar.)

THE COURT: Yes.

MR. ARKIN: My objection is as follows: The testimony which Mr. Kaufman seeks to elicit from this witness is as to his opinion as to whether or not the examples given on page 9, I believe it is, of This is My Land are comparable to land at Rio Rancho.

In other words, he is asking him whether it is comparable. Comparable is a very difficult term to define.

MR. KAUFMAN: Mr. Arkin is not correct.

MR. ARKIN: This is based on the grand jury testimony.

THE COURT: He says that is not right.

MR. ARKIN: May we have an offer of proof?

MR. KAUFMAN: I will not be asking this witness whether or not in his opinion is this land comparable. I will be asking him the factual questions about the land with respect to any one of the examples you may want to pick out.

I will be asking him how is that land zoned with respect to I think four or five of the seven examples listed there. It will turn out that the land is zoned either commercial or industrial, which the government will argue is not land comparable to Rio Rancho, but I will not be asking this witness' opinion as to that, but as a factual matter I will be asking him if he is familiar with that land, how was it zoned and that will be the end of it.

THE COURT: From that you want to argue that, therefore, that such a zoning is not comparable to land that is zoned --

MR. KAUFMAN: We will arguing that those land transactions are misleading and the reason they were misleading is because they were telling the public that these are examples of similar type transactions from which they could draw the conclusion that the same thing would happen to their land. But, in fact, they are using examples that are commercial and industrial land.

THE COURT: I will let you ask the witness as to the examples as to what they were zoned for.

MR. KAUFMAN: And were they located on the map and that is it.

MR. ARKIN: How about how they were zoned at the time of the transactions. How they are zoned now, that is in 1976, is not really the issue.

THE COURT: He is not asking that. He is going to ask how they were zoned at the time of the transactions.

MR. ARKIN: That is fine then, okay.

MR. KAUFMAN: That's correct.

MR. FLEMING: And the time of the transaction.

MR. KAUFMAN: I object asking at the time of this brochure.

MR. ARKIN: No.

THE COURT: Why not, is that what the representation is?

MR. ARKIN: The representation is not they were sold at the time of this brochure. These transactions took place historically.

THE COURT: How can you tell from looking at it? You gaveit to the public. You must have had something in mind when you showed it to him and not something that happened in 1942.

MR. ARKIN: The point is the relevance.

THE COURT: As far as I am concerned that speaks of the date you showed it to the public.

MR. ARKIN: Please, your Honor. The point is that the price differential between the purchase and the sale of these examples would have been effected -- are there dates on there?

THE COURT: Yes, the dates are here.

MR. ARKIN: Use the dates, as of the time of the transactions.

MR. KAUFMAN: Your Honor, the point is that when this was given to a customer in 1967 or 1968, there is nothing in there that tells the customer that if the zoning -- whether or not the zoning has changed since then.

MS. THOMPSON: That is irrelevant.

MR. ARKIN: If the prices were affected.

THE COURT: I think that the man has to tell what the zoning was at the time it was sold because that is the basis upon which the price was paid.

MR. ARKIN: Right.

MR. KAUFMAN: The customers at the Rio Rancho dinners, at the time he is given this is not being told anything with respect to whether or not the zoning has been changed --

THE COURT: Wait a second. You are trying to point out that they are improperly telling a customer that lots bought for $33,000 in '58 and sold for $59,200 in '63 cannot be compared to what they purchased in Rio Rancho.

Therefore, its zoning at the time of sale is important.

MR. KAUFMAN: In other words, if it was a residential area at that time. I agree with your area.

MR. FLEMING: At the time of purchase, too, Judge. It has to be purchase and sale because the whole thing is if you buy land and there is development, it will increase in development.

MR. ARKIN: That is what makes it worthwhile. The person buying it would know of the zoning when he purchased it.

THE COURT: I think that is fair.

MR. FLEMING: He knows what is coming.

THE COURT: If there is a change in zoning, you can upgrade your property.

MR. KAUFMAN: Yes, but you have to compare it with Rio Rancho. Rio Rancho was zoned, every place that the people bought their land was residential land and Rio Rancho is telling its customers buy this half acre lot because sometime in the future it may become commercial.

THE COURT: You don't listen carefully. You are trying to use this to show that these defendants misrepresented to the purchaser the increase in value that could come from their land. That is the reason you are using it.

In order to base your charge, the jury has to know whether something happened to that land to make it go up or what didn't happen to it.

Now, if a person bought land and it gets sold for commercial and as a result of that zoning the price shoots up, maybe they are foolish to have put it in, but they did. If they want that brought out, they are entitled to haveit brought out.

MR. KAUFMAN: All right, I will ask the witness if he knows, your Honor.

(In open court.)

MR. KAUFMAN: Your Honor, the government would request a very short recess, approximately five minutes.

THE COURT: All right.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

THE COURT: You may continue.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, I show you what has been marked as Government's Exhibit 55 for identification, and ask you if you can identify that (handing).

A This is the vacant land study prepared by the city planning department in 1972 for land within the city limits.

Q Within the city limits of Albuquerque as of 1972?

A That's right.

MR. KAUFMAN: The government offers 55 for identification.

MR. ARKIN: No objection.

XXX (Government's Exhibit No. 55 received in evidence.)

THE COURT: Is this the city?

THE WITNESS: The city.

THE COURT: Just for the city?

THE WITNESS: City limits, yes.

Q As of 1972, Mr. Carruthers, how big was

Albuquerque in terms of acreage?

A In 1972, the total city acreage was 53,587 acres.

Q And what was the purpose of the 1973 vacant land study?

A The city was trying to encourage in fill development because of the cost of extending utilities to the periphery to the city and there was still a considerable amount of vacant land undeveloped that had all utility services in place and the city was concerned about using up those properties first before extending further on the outskirts.

Q And how did the vacant land study divide up the city of Albuquerque in analyzing the amount of vacant land?

A Well, it was divided up by areas, study areas; the west mesa, the valley and the east mesa.

Q And how did you define west mesa, valley and east mesa?

A The west mesa was the area west of the river; the valley is the valley that is within the city limits and most of that lies in the north valley,there is very little of the south valley inside the city limits; the east mesa was everything east of the eastern edge of the valley, including both the northeast and southeast heights.

THE COURT: I gather this valley you are talking about is fairly narrow?

THE WITNESS: It's -- well, it is fairly wide, actually, as you can see on the photo.

Q Can you point to it on the photo, Mr. Carruthers?

THE COURT: Does the valley come up to the Sante Fe tracks?

THE WITNESS: Yes. The Santa Fe tracks are in the valley more or less along the eastern edge of it.

THE COURT: All right.

THE WITNESS: This whole area is valley here (indicating).

THE COURT: All right. Thank you.

Q Directing your attention to page 5 of the report, the table that appears there, can you just tell us what the table is?

A The table lists vacant land by the three study areas that I mentioned and divides the vacant land into residential and non-residential and then there is a total column.

Do you want me to read it?

Q No. That is enough.

There is a graphic map on page 7.

Can you just tell us what that depicts?

A That map defines the three major areas in the stu study and then it shows the square miles that have -- I'm sorry, it shows blocks to indicate 100 vacant residential areas, and the numbers of those are shown on here.

Q What does each one of these blocks represent?

A It represents 100 residential acres.

MR. KAUFMAN: If I may read from part of this, your Honor?

THE COURT: Yes.

(Mr. Kaufman read from Government's Exhibit 55 in evidence to the jury.)

MR. FLEMING: I object to the non-residential as irrelevant, your Honor.

THE COURT: Overruled.

Q Mr. Carruthers, these numbers refer to acres, is that correct?

A Yes.

MR. KAUFMAN: Continuing to read on page 5.

(Mr. Kaufman read from Government's Exhibit 55 in evidence to the jury.)

Q Mr. Carruthers, there are two words that are used there, secondary and primary.

Can you tell us what those words meant in this report?

A Primary land was land that could be serviced by city utilities. Secondary land was land that was available for development but could not be immediately served by city utilities.

(Continued on next page.)

MR. KAUFMAN: I will just show the jury the map on page 7 again with the blocks indicating 100 vacant residential acres.

This is the east mesa, this is the west mesa, this is the valley (indicating)

Continuing to read on page 9.

(Mr. Kaufman continued reading from Government Exhibit 55 in evidence to the jury)

MR. FLEMING: Read the next sentence, please.

MR. KAUFMAN: You can do that on cross, Mr. Fleming.

MR. FLEMING: It is quite relevant, your Honor.

THE COURT: You have made the same objection, so I will have to make the same ruling.

MR. FLEMING: I never have, your Honor.

THE COURT: Mr. Arkin has.

MR. ARKIN: Don't inflict him with me.

MR. FLEMING: I don't remember.

MR. KAUFMAN: Your Honor, I will be glad to read the next sentence, anyway.

(Mr. Kaufman continued reading from Government Exhibit 55 in evidence to the jury)

MR. FLEMING: Thank you, Mr. Kaufman.

MR. KAUFMAN: Just reading from page 15.

(Mr. Kaufman continued reading from Government Exhibit 55 in evidence to the jury)

Q Mr. Carruthers, was there additional vacant land outside of the Albuquerque city limits at that time?

A Yes.

MR. ARKIN: May we have outside how far? Outside of Seattle or what?

THE COURT: When you say outside, what limits are you putting on your answer?

THE WITNESS: Immediately adjacent to the city, on the west mesa, on the northeast side of the city and also some to the south.

THE COURT: Immediately adjacent to the city limits.

Q Mr. Carruthers, how long was the 1985 land use plan which was issued in 1964 in effect?

A It was in effect until 1975, when the current comprehensive plan of the city was adopted.

Q I show you what has been marked as Government Exhibit 53 for identification, and ask if you can identify that (handing).

A This is the metropolitan areas and urban centers plan, which is one of the three components of the comprehensive plan for Albuquerque and Bernalillo County adopted in 1975.

Q What are the other two components of the overall plan?

A The first one is the policies plan and the third one is the major open space plan.

MR. KAUFMAN: The government offers Government Exhibit 53 for identification.

MR. FLEMING: May I ask a question, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

XX BY MR. FLEMING:

Q Mr. Carruthers, this is a copy of Exhibit 53 (handing).

Was that part of a single plan; one part of a single plan?

A It is one publication of a single plan.

There were three components of it.

MR. FLEMING: I would object to it, your Honor, unless the other two components are also produced.

CONTINUED DIRECT EXAMINATION

XXX BY MR. KAUFMAN:

Q Mr. Carruthers, are there any conclusions or factual statements in the metropolitan areas and urban centers plan that are affected by the other two components of the overall plan?

A This component of the plan illustrates the policies in the policies plan.

The major open space plan then deals with essentially the land around the perimeter of this area that is defined as the development area for the city of Albuquerque on this plan.

Q Am I correct in saying, then, the open space plan picks up at boundary lines where this plan leaves off?

A Yes. It also includes the major open spaces along significant arroyos within the city itself. But the major of the open space shown on the open space plan is outside the boundaries shown on this map.

MR. FLEMING: Same objection, your Honor.

THE COURT: Put them all in.

Q Mr. Carruthers, do you have any other copies of the other two portions of this plan with you?

A I do not.

MR. KAUFMAN: Your Honor, I think we have the other two portions back in the office. We'll bring them down.

THE COURT: I will take it --

MR. FLEMING: Excuse me?

THE COURT: I will take it subject to --

MR. ARKIN: We have copies here if you would like to have them marked, your Honor, so we don't have to run back and forth (handing).

MR. KAUFMAN: May these be marked 53-A and B.

(Government Exhibits 53-A and 53-B, respectively, were marked for identification)

xxxx

THE COURT: I gather there are no objections to all three of them.

MR. ARKIN: Oh, no, there are no objections.

(Government Exhibits 53, 53-A and 53-B, respectively, were received in evidence)

xx

Q Mr. Carruthers, let me just show you 53-A and B.

Are these the two other parts that you were referring to (handing)?

A Yes, they are.

Q This plan was issued in 1975, is that correct?

A That's correct.

Q Again, Mr. Carruthers, what I would like you to do is, using Government Exhibit 1075-A, which is this large photo mosaic of the Albuquerque area in 1975, can you again trace for us the development of Albuquerque in relation to the way it had been as of 1967?

If you could stand off on this side so the jury can see, Mr. Carruthers.

A (Witness complies)

d t3b

MR. FLEMING: Your Honor, I have spoken to the prosecutors. They would have no objection to again instructing the jury as Mr. Woodward testified that despite the difference in the size of the picture, the scale is the same.

THE COURT: I have not told them that yet. You used the word again.

MR. FLEMING: Mr. Woodward said it, but it was in testimony.

THE COURT: The scale of the map that you see Mr. Carruthers working on is the same scale as the other two maps which you have seen or mosaics, I should call them. That scale is one inch to a half mile.

It is just that the Exhibit 1075-A, which Mr. Carruthers is now drawing his outline on, embraces a larger geographical area than the others.

Q Have you outlined all of Volcano Cliffs on there?

A I outlined what is actually developed, not what is vacant. The built part, not the vacant land with graded roads.

Again, the development boundary on the west side runs along the breaking point between west mesa and the valley floor in the southwest quadrant up to

Central Avenue, very much like it was on the previous photograph.

Then extending along Central Avenue were some scattered commercial development.

Then picking up the Snow Vista development, which are single family residential in this area.

More fully developed than had been on the previous photograph in '67.

Then going back up along the north side of Central there are some scattered industrial plants in the area just west of Coors Road and north of Central Avenue here.

Q Is that on Atrisco land grant property?

A Yes, it is.

Q Continue.

A Proceeding on up here there are some truck terminal facilities, storage facilities. Residential development again is more or less the same on this east side of Coors Road and then going north to the interstate, some residential development right along the river bluffs overlooking the city, relatively small area there.

Then the University of Albuquerque campus about the same extent of development as it had been.

The La Luz subdivision in this area, small condominium development contains about 90 units was completed here, the first phase of it, that is.

Then the Taylor Ranch area was beginning to develop here on the south side of Montano Road. Going farther west on Montano Road there was a small development area in the first part of Volcano Cliffs.

Q Can you just outline with the pointer the full area of Volcano Cliffs where the bladed roads appear?

A It occupies this whole area here (indicating).

Q Continue.

A Then back to the edge of the valley, this is agricultural land down in here.

There is a new Indian school in this location.

Then Paradise Hills has expanded some in this area. Development is underway in several parts of it. The golf course -- there is more development around the golf course is more or less the same.

The airport is here and then a small subdivision just below Rio Rancho in this area.

Then the outline here traces the existing development in Rio Rancho at that time, the golf course and extending north and pick up the development along the main road.

Q What road is that, Mr. Carruthers?

A I have forgotten the road number.

Q Is that 528?

A I believe it is.

Q Is the total subdivision of Rio Rancho Estates, was it the same size in 1975 as it was in 1967? Can you trace the outline of Rio Rancho Estates in 1975?

A In 1975 the outline of Rio Rancho Estates is here (indicating).

Q Could you continue with your description of the Albuquerque area?

A Moving to the east side, the development again was along the eastern edge of the valley.

Then eastward in the vicinity of Los Angeles Boulevard there was some additional industrial development with some warehouses and additional plants in this location. A mobile home park. Another mobile home park over here.

The cemeteries that I mentioned before and the airport.

An additional mobile home park or subdivision in this location has been developed and there was residential development underway in the Loma del Norte subdivision and extending on over to I-25 there is another mobile home park in this location right at San Antonio Road.

Q On what piece of property was that subdivision located?

A All of these developments from that line north are in north Albuquerque Acres.

Then going south within the Sims land there was industrial development in this location. The Singer plant and so on were in place on the west side of I-25 and an additional development had taken place in this area, residental development had extended north of the Arroyo del Oso golf course in the Sims property almost to San Antonio Road up here.

Then a boys academy camp, there was development around that on the west side of it and to the southwest of it and then south to the Bear Canyon Arroyo there were developments underway going over to Eubank and down to Juan Tabo and a large vacant piece south of this one Academy Place subdivision.

An additional holiday park had been constructed north of Montgomery Boulevard in this area. Glenwood Hills had expanded with an additional area south of the original unit in this location in the Siandia Foothills.

Development was more or less occurring over about a half mile from the Tramway Boulevard.

Then vacant land in this area along Tramway Boulevard down to Lomas Boulevard, there was a subdivision east of Tramway in that location.

Then another one in the area south of Lomas Boulevard in the vicinity of Cooper Avenue.

A partly residential subdivision in the foothills right near I-40.

The four hills area had developed more fully and also a large mobile home park in this area at the south extension of Juan Tabo Road.

More commercial development along Central Avenue extending over to the Siandia base mountains.

Q Mr. Carruthers, can you mark on this map the same landmarks that we have on the others, in other words, Montgomery, Juan Tabo and Tramway.

(Witness complies)

A This is Montgomery and this is Juan Tabo and this is Tramway.

Q In the '67 photograph, with the exception of the original Glenwood development that I believe you mentioned, nothing appears to be east of Tramway Boulevard.

Can you just point out for us on the '75 map how that has changed?

A The original Glenwood Hills development was this area right here. It expanded south to pick up this area of Glenwood Hills South, about another 200 acres.

MR. FLEMING: Was that 200?

THE WITNESS: Approximately.

Q One other thing, Mr. Carruthers. Maybe you had better step down again.

This land north of Montgomery and east of Tramway in here, can you tell us what land that is?

A That land up to this line here is part of the Sims property.

The land up in here, I guess I forgot to mention, there is some low density residential development taking place up in the Siandia Foothills here called Siandia Heights.

Q Will you circle that?

A Part of that is on Indian land in this area here. The total subdivision is like that, but the development is not complete in the whole area.

Q Is this land beneath Siandia Heights, the Sims land that you mentioned, is that land that is available for development?

A Yes, it is.

Q What is the extent of the development on the Indian land?

A The base of the tramway that goes up to the Siandia Peak is in this area right here.

The Siandia Indian Reservation boundary runs right through here.

The first unit of Siandia Heights subdivision is on Indian land.

Q Do the Indians have development plans for parts of their land?

A They do have a master plan for their property, yes.

Q Does that include an ownership procedure or a leasing procedure?

A A long term lease arrangement.

Q Development has started on the Siandia Reservation land, is that correct?

A In Siandia Heights subdivision, yes.

THE COURT: What price?

THE WITNESS: It is a very high-priced residential development in the foothills.

Q Do you know how long those leases are on the Indian land?

A I do not know.

Q Do you have a copy of Government's Exhibit 53, the metropolitan areas and urban center plan?

A I do.

Q In connection with this 1975 plan, how was the Albuquerque area divided up?

A It was divided into a series of development areas --

MR. FLEMING: I am sorry, your Honor, are we talking city limits again or something beyond?

THE WITNESS: We are talking about the total metropolitan development area. It is not the same as the city limit.

THE COURT: Could you tell us what you mean when you say metropolitan development area?

THE WITNESS: On this plan what we did was define the area that was usable for development within the constraints of natural geographic limitations like the Siandia Foothills on the east side of the city and the lava flow and the volcanoes on the west side.

THE COURT: Would you point that out on the map so the jury knows what you are talking about.

THE WITNESS: The volcanoes are located right here. This lava flow escarpment defines the western boundary of land that we feel is appropriate for development because when you get above that area the soil problems are very difficult to work with for installing utility systems.

The city, because it had previously approved the Volcano Cliffs master plan, did, however, include in the total development area on this plan all of the Volcano Cliffs subdivision and all of the Paradise Hills subdivision, both of which had had master plan approval by the city many years ago.

We defined as developable area all of the north Albuquerque Acres area, the Siandia Heights area and the Sims property up to the line where the slope changes to more than ten percent. The cost then of development above that line becomes very expensive.

The city has used that as the limitation of development all the way along the eastern edge of the city and has bought the land for permanent open space above that line. That line runs approximately a half a mile east of and parallel to Tramway Boulevard from Montgomery south.

North of Montgomery it goes back quite a ways farther east because this land is flatter.

Then going south the development limit line runs along the Tijeras Arroyo down to the valley.

Then on the west side the line extends from this termination of the lava flow along this break in topography here, down along the west side of the Atrisco Village or Snow Vista area here and then down along this line to -- I don't know how to describe that, that geographic feature exactly --

THE COURT: It looks like the edge of a hill, isn't it?

THE WITNESS: It is a break in topography. It is not as clearly defined as these up here (indicating).

And south to the south edge of the county.

Q Does the '75 plan include a map which shows the area that we have been talking about?

A Yes, it does.

Q Is that the map that is on page 2?

A Yes.

MR. KAUFMAN: May I just show that to the jury, your Honor?

THE COURT: They don't need that. They just watched the witness outline it on 1075-A.

Q I believe, Mr. Carruthers, that you say that this area that you have just outlined was then divided up into a series of development areas, is that correct?

A Yes.

Q Can you just first tell us what those areas were and then I will ask you geographically where they were located?

A Okay. The majority of the area within the total is included in what is referred to as the established urban area and it is not exactly a majority of the total acreage, but it is almost all of the developed part of the city limits.

It follows the city limits line and then it includes the areas where commitments had been made in the way of approved master plans or approved subdivision plans as well.

Then adjacent to that around the outskirts in areas like North Albuquerque Acres, there is a second category called the developing urban area and the density range proposed for that area is somewhat less than the density range for the established urban area. The established urban area is three to inne dwelling units per acre for an overall gross figure. The developing area around the periphery, the density range is three to six dwelling units per acre and then in the valley areas we divided both the north and south valley into two different categories, the closer in parts of the north and south valley, that is closer to the city limits, have utility, sewer and water utility lines in place or under construction at this time and those areas were defined that are serviced or to be serviced by those utility systems operated by the city as semi-urban with a density range of one to three dwelling units per acre and then the farther outlying parts of the north and south valley are referred to as rural and open with a density of one dwelling unit per acre with the intent of maintaining agricultural activities in those areas as much as possible.

Q Am I correct, then, Mr. Carruthers, there were five different areas established, is that correct, redeveloping urban, established urban, developing urban, semi-urban and rural and open?

A That's correct.

Q Does the color coding on this map define each of those five areas?

A Yes, it does.

Q Was the acreage in each one of those five areas determined?

A Yes, it was.

Q Can you tell us what the acreage was in each of those five areas?

A The redeveloping urban area is the part of the city that is the oldest part where considerable redevelopment activity is under way. That contains 6400 acres. It is basically located around the central business district and in the valley area.

MR. KAUFMAN: Your Honor, it may be helpful as Mr. Carruthers is reading that, I can refer to the map to the jury and they can see which areas are being referred to.

THE COURT: All right.

Q The brown area in the center is the redeveloping urban, is that correct?

A Yes, the gold color.

THE COURT: Go ahead.

A The established urban area contains 63,600 acres and it is shown in a tan color on the map.

A developing urban is showin yellow --

MR. FLEMING: Did he say tan?

THE COURT: Yes.

A It contains 39,100 acres.

Q Is that the yellow area, the developing urban?

A Yes.

The semi-urban area contains 15,800 acres and is shown in pale green.

The rural and open area contains 10,000 acres and it is showin in a darker green.

Q What is the total acreage with respect to those five areas?

A The total acreage is 134,900 acres.

Q I believe you said thatthere were densities given for each one of the five areas, is that correct?

A Yes.

Q The density for the established urban was what?

A Three to nine dwelling units per acre.

Q And the density for developing urban was what?

A Three to six.

Q That is dwelling units per acre, right?

A That's right.

Q And for semi-urban, what was the density?

A One to three dwelling units per acre.

Q For rural and open?

A One dwelling unit per acre.

THE COURT: What did you say the total was?

THE WITNESS: 134,900.

Q I show you what has been marked Government Exhibit 1069 for identification and ask if you can identify that?

A Yes, that is a memorandum that I wrote to Al Pierce, the director of the council of governments.

Q What is the second page?

A The second page is a table that shows population allocations to the year 1959 using the map in this part of the comprehensive plan as a base for determining those allocations.

Q Does this memorandum and table give a range of population that can be accommodated in this study area given the density ranges that you have prescribed for the five areas?

A Yes, there is a figure for each area using the lowest density indicated on the comprehensive plan and the highest density.

~~Q~~ Mr. Carruthers, utilizing the lowest density range for each of the five areas that we have described in the 1975 plan, how many people in this study area could be accommodated?

MR. FLEMING: I object to that. Without a voir dire I object to it.

THE COURT: What is your voir dire?

MR. FLEMING: Excuse me.

THE COURT: Conduct your voir dire.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q The opinion you are about to give is based upon a study which was issued in 1975?

A Yes.

Q And it is based upon your division of the area you have described into five separate characterizations, redeveloped urban, established urban, developing urban, semi-urban and rural urban, is that correct?

A That's correct.

Q You have assigned each of those five areas a projected number of units which in your expectation will fill those particular areas, is that correct?

A What we have done is we have taken the density ranges listed on the plan and multiplied those times the acreage.

Q Yes, that's right, but you selected the density ranges?

A That's right.

Q Am I correct that in 1975 the average density per developed acre in Albuquerque was approximately 5,000 people per square mile?

MR. KAUFMAN: Objection, your Honor. I don't think this is a voir dire any more. This is cross examination.

THE COURT: He is cross examining the basis of the factual material that you want to use.

A I am not sure about people per square mile. I don't have that in my head, but the density in the city of Albuquerque at this time is, taking the total city limits acreage and the number of dwelling units we have, is about less than two dwelling units per acre or pretty close to that.

Q The present density in 1976 is less than two units per acre?

A That's true.

Q That has been true for the last ten years, isn't that correct?

A Pretty much, yes.

Q Did you not in 1962 project densities as you are now projecting them in 1975?

MR. KAUFMAN: Your Honor, I object.

THE COURT: That is not voir dire.

MR. FLEMING: All right.

THE COURT: All that we have to find out is if these projected densities are what he says, two units per acre.

MR. FLEMING: They are not, your Honor. He has just described them.

Q Would you give the density you are projecting for redeveloped urban?

A These are the maximum capacities --

Q You have a lower and a higher range?

A A low and a high figure, but they are capacity figures.

Q What have you projected for redeveloped urban?

A For redeveloped urban the low figure is 175,500 and the high figure --

Q No, the units per acre.

THE COURT: What is the unit you are using?

A The units per acre, nine. The low figure is nine and the high figure is eighteen.

Q Established urban, what are your units?

A Three to nine.

Q Developing urban, what are your units?

A Three to six.

Q Every one of those projections is higher than existing density, isn't that correct?

A Because there is a lot of vacant land.

Q My question is, is that correct?

A That's correct right now.

MR. FLEMING: I object to it.

THE COURT: Sustained.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, you testified that the average density -- the average dwelling unit per acre now in Albuquerque is approximately twl dwelling units per acre, is that right?

A Yes.

Q That is an average overall of the city, is that correct?

A Yes.

Q In some parts --

MR. ARKIN: Less than two dwelling units per acre.

Q In some parts of the city it is more than two dwelling units per acre, is that correct?

A Much more.

Q In some parts of the city it is less than two dwelling units per acre, is that correct?

A That's correct.

Q With respect to the dwelling units per acre that is projected in this report, with respect to the low range, in established urban the low range is three dwelling units per acre, is that right?

A That's right, and that is assuming full development of the property in that area at that density.

MR. FLEMING: I move to strike that, your Honor, the answer.

THE COURT: Overruled.

MR. FLEMING: Not the answer "Yes," but the rest of it.

THE COURT: I will take it.

MR. FLEMING: As non-responsive.

THE COURT: Tell us how you got the figure three.

THE WITNESS: If you look at the predominant single-family residential development in Albuquerque, the majority of it is occurring in densities of three to four dwelling units per acre.

THE COURT: Now?

THE WITNESS: That has been the pattern over the last 20 years, but we are talking about two different things here. We are talking about developed property, not the total gross acreage of the city with all the vacant land.

THE COURT: These figures you are referring to are assuming full development in each area?

THE WITNESS: That's right.

THE COURT: I think that explains it, Mr. Fleming.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q You are assuming full development at a density you projected?

THE COURT: No, at a density which now exists in developed areas.

THE WITNESS: That's right.

THE COURT: The figure you brought out of two is an average of developed and undeveloped areas. He says that in developed areas now, developed areas, the density is three.

The figure of less than two is arrived at because it takes in undeveloped as well as developed areas in determining density within the city limites.

BY MR. FLEMING:

Q That is exactly the same situation that pertained since you issued your 1985 land use report in 1964?

A I am not sure --

THE COURT: He said for the last 20 years in the developed areas the use has remained constant at three, is that right?

THE WITNESS: In single-family residential development.

THE COURT: All right, single-family residential developed areas.

MR. FLEMING: I understand. He has said that is based upon developed and undeveloped land.

THE COURT: That is why your average goes down.

MR. FLEMING: The average goes down because the average density is based upon developed and undeveloped land.

THE COURT: Right. This projection is for fully developed areas.

MR. FLEMING: That is why I am asking my question.

THE COURT: Okay.

BY MR. FLEMING:

Q You made exactly the same projection with regard to full development in 1964, did you not?

A I don't believe they were exactly the same.

MR. KAUFMAN: Objection, your Honor, this is not voir dire.

THE COURT: I am worried about this, not what he did in some other document. You may impeach some other document at some other time, but not at this time.

MR. FLEMING: I can argue right here or I can argue at the side bar, your Honor.

THE COURT: He is offering this document and indicating how he has arrived at it and I am going to let it in. That is that he used the figure three based on his experience of the last 20 years.

Now, if that isn't true for some other exhibit, that is for another time, not for this one.

MR. FLEMING: His figures come also from that projection and also from a projection that all the vacant land he is talking about be filled.

THE COURT: That's right.

MR. FLEMING: I am attacking the credibility of that projection.

THE COURT: I overruled you.

MR. FLEMING: All right.

(Continued on next page.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, utilizing --

MR. FLEMING: Your Honor, are you accepting the range three to nine, if your Honor please?

THE COURT: He said he is using, for what his answer is going to be, he is using the lowest range, three.

MR. FLEMING: All right.

MR. KAUFMAN: That's correct.

Q Utilizing the low density range with respect to the five areas defined in the 1975 plan, how many people could be accommodated in this study area?

A 1,178,100.

Q Do you know approximately how many people there are in the study area as of this time, Mr. Carruthers?

A In Bernalillo County, there are 300 --

THE COURT: No, no. The question is in the study area.

It was that map that you had before you from which you have been testifying.

Do you know?

Q Let me ask it this way --

A I can answer that.

Q Go ahead.

THE WITNESS: I have to subtract the population of the east county area from the total.

I know what the total is for Bernalillo County, 370,000.

Q And the study area that we are talking about is a portion of Bernalillo County, is that right?

A That's right.

Q And how much would you subtract from the total population of Bernalillo County to give you the current population of the study area?

A Approximately 5,000.

Q So the total in the study area now would be how much?

A 365,000.

MR. KAUFMAN: Your Honor, may we have a brief side bar?

THE COURT: Yes.

(At the side bar.)

MR. KAUFMAN: Your Honor, I just have a few more questions of this witness.

During the last recess I asked him about those land transactions examples in term of whether or not he knew how they were zoned during the time periods relevant.

He does not know. He can find out by calling the planning department in Albuquerque and they will be able to tell him with respect to those relevant years.

What I would like to do is reserve the right on redirect examination to go back and ask the witness those questions and, of course, preserving the defendants' right then on recross to cross him on that, or we can take an early lunch recess, one or the other.

THE COURT: Do you have another witness out there?

MR. KAUFMAN: I really don't think it would be a good idea to start breaking up the witnesses at this point.

These witnesses, Mr. Carruthers and Mr. Avellanet, I think all sides will agree, are important witnesses and I think they should be kept intact.

THE COURT: All right. Why don't you cross examine without the information prior to lunch time.

MR. ARKIN: Yes, I can.

THE COURT: All right.

Ask your questions and we will let you, after the lunch period, take him back on direct before cross is completed.

MR. ARKIN: Your Honor, could we tell the jur- of this procedure ahead of time so they understand it will be a little different?

THE COURT: All right.

Let him finish up and then I will tell him.

(In open court.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Carruthers, I would like to read to you from a portion of Government's Exhibit 388, which is "This is My Land."

Under the heading "Albuquerque's Future," the following appears:

"Although the recent growth of Albuquerque has astounded even the most conservative authorities and its continued growth seems inevitable, the natural geography of the area makes it clear that this sunshine city's population can continue to explode in only one direction. According to experts, Albuquerque's future growth pattern is predetermined. It must take place toward the northwest."

Mr. Carruthers, was that a reasonable statement to make in the late 1960's?

MR. ARKIN: Objection, your Honor. It calls for opinion.

THE COURT: Objection sustained.

MR. KAUFMAN: Your Honor, may I be heard on that?

THE COURT: No. You have been heard ad infinitum ad nauseaum.

MR. KAUFMAN: Your Honor, I don't want to say it in open court --

THE COURT: I know you can't but it is in the record, and I know the basis of his objection and you know the basis of his objection.

MR. KAUFMAN: This is a question that is verbatim from Mr. Arkin's cross examination of Mr. Pierce, your Honor.

THE COURT: We will worry about that on direct, then.

MR. KAUFMAN: On direct?

THE COURT: On redirect. If he doesn't bring it out on this witness, you can't ask it.

A waiver on Mr. Pierce does not constitute a waiver on Mr. Carruthers.

MR. KAUFMAN: Let me read one more sentence.

Q I continue on, Mr. Carruthers:

"And this is where most of the new growth activities are taking place."

MR. ARKIN: Objection.

THE COURT: That is factual material for the jury to determine.

MR. KAUFMAN: Yes, your Honor. This is not asking for an opinion, this is asking for a fact on the part of the witness, whether or not that was an accurate statement.

THE COURT: The jury will draw that conclusion from the evidence the witness has already put in the record. That is the jury's determination.

MR. KAUFMAN: No further questions.

THE COURT: Ladies and gentlemen of the jury, the government is concluding its direct examination at this time, although they have a little more direct they want to put in but it will take over the lunch period for them to assemble that information, so I am allowing Mr. Arkin to start his cross examination now prior to lunch. We will come back on direct to the witness after lunch.

(Continued on next page.)

CROSS EXAMINATION

XXXX BY MR. ARKIN:

Q Mr. Carruthers, I am Stanley Arkin.

Are you familiar with a transportation study prepared by Wilbur Smith Associates?

A Yes.

Q That was prepared in May of 1965?

A I believe it was prepared before that, it was adopted in 1965.

Q Adopted in May of 1965.

And you have read that report?

A Sometime ago I have, yes.

Q And you have a copy of that report in your office, don't you?

A Yes.

MR. FLEMING: Can't hear.

THE COURT: He said yes.

A Yes.

MR. ARKIN: Is it me or the witness you can't hear?

MR. FLEMING: I can hear you.

THE COURT: Oh, that's easy.

Q That was adopted by the Albuquerque City Commission in October of 1965?

A Yes.

Q And it is an official document in the city of Albuquerque?

A Yes, it is.

Q And that document projected or estimated that the population --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Don't read from it.

Offer it in evidence if you are going to read from it.

MR. ARKIN: I am reading from it.

THE COURT: Then ask him a question.

MR. ARKIN: I am asking him whether the document --

THE COURT: You are making a statement of fact. I don't know whether it is true or not unless you put the document in evidence.

You appear to be reading something.

MR. ARKIN: I am reading my notes.

THE COURT: Well, then, put the document in evidence.

MR. ARKIN: Not my notes.

THE COURT: Not your notes.

(Defendant Daniel Friedman and Henry

xxx

Hoffman Exhibit EJ marked for identification)

Q Mr. Carruthers, I show you Defendants Exhibit EJ for identificatin (handing).

Are you able to identify that?

A Yes. That is a xerox copy of the major street and highway planning done by Wilbur Smith & Associates.

Q The same document adopted by the City Planning Commission of Albuquerque?

A The City Commission of Albuquerque.

Q And the same document you have in your office in Albuquerque?

A That's right.

MR. ARKIN: We offer it.

MR. KAUFMAN: May I see it?

(Handing to Mr. Kaufman)

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q Mr. Carruthers, do you know if there were attachments to this plan in the form of maps or charts or anything else?

A There are maps and charts in the plan, yes.

Q What I am asking, were there any maps, fold-out maps that would have been in a pocket section as there were in the 1985 plan, do you recall?

A There was a fold-out map. I'm sure that I do not have a copy of that in the copy that I have in my office.

Q Does that fold-out map appear anywhere in here?

A No. It was a big map. It's not here.

MR. KAUFMAN: Do you have the fold-out map?

MR. ARKIN: I don't believe we do if it's not in there.

It is very similar to the 1985 land use study which was marked as two separate exhibits, your Honor. One was the fold-out pocket map and one was the document itself.

MR. KAUFMAN: Your Honor, I have no objection to the report, but I think it necessarily has to be complete with the inclusion of the map.

THE COURT: You did not offer yours with the map.

MR. KAUFMAN: Yes, I did, your Honor.

THE COURT: Separately.

MR. KAUFMAN: Just to give it a different number for identification, but it was offered --

THE COURT: At the time you first were

putting it in, nobody knew you were going to offer a map in. It was not until you offered it sometime later.

Objection overruled.

(Defendant Howard Friedman and Henry Hoffman Exhibit EJ received in evidence)

xx

CONTINUED CROSS EXAMINATION

x

BY MR. ARKIN:

Q Why don't you hold on to this (handing).

Mr. Carruthers, you are aware, aren't you, that that report, the Wilbur Smith report transportation study, estimated a 400 percent increase in population in the northwest by 1985?

A I believe that's correct. I have not read the report recently.

Q And you also know that that --

MR. KAUFMAN: Your Honor, I object to that. I think the question and answer should be stricken, because it is Mr. Arkin testifying.

THE COURT: Turn to the page, Mr. Arkin, and show it to him.

Q Look at page 83, look at District 62 --

THE COURT: Wait. Let him get page 83 first.

MR. ARKIN: All right.

MR. KAUFMAN: Your Honor, can I approach the witness so I can look at it as well?

THE COURT: Yes.

(Pause)

THE COURT: Go ahead, Mr. Arkin, he has page 83.

Q If you look at page 83 the question I asked is the foundation for the question I asked.

THE COURT: Tell him where. I don't have it.

(Pause)

THE COURT: Does that report estimate a 400 percent increase in population in the northwest by 1985?

THE WITNESS: Yes, it shows a ratio of future, current --

MR. ARKIN: I want a yes or no answer.

A Yes, it does.

MR. KAUFMAN: Your Honor, I think the report should speak for itself.

THE COURT: You did the same thing with the witness. I don't know what you are objecting to.

MR. KAUFMAN: I read from the report, your Honor.

THE COURT: So the witness.

MR. KAUFMAN: The witness is saying what the report says rather than --

THE COURT: Overruled.

Q That very same public document, Mr. Carruthers, proposes eleven river crossings, that is Rio Grande River crossings to the west mesa. Look at page 139.

(Pause)

A Would you repeat the question?

Q Does the transportation study, the public document you have in your lap now, propose that there be a total of eleven river crossings over the Rio Grande by 1985?

A Total of eleven, yes.

Q That would be in the northwest as well as the southwest, is that correct?

A Both northwest and southwest.

Q How many of those proposed bridge crossings or bridges would be in the northwest?

A Five.

Q Five in the northwest quadrant with six in the southwest quadrant, is that correct?

A One of them is Central Avenue.

Q Which is in between?

A Yes.

Q You split it up. The I-40 crossing would be in the northwest, am I correct?

A Yes.

Q You may put that down now, sir.

(Defendant Howard Friedman and Henry Hoffman Exhibit EK marked for identification)

Q Mr. Carruthers, I show you Defendants EK for identification and ask if you recognize that document.

A I have seen that document, yes.

Q You have read that document?

A Yes.

Q Do you know what it is?

A It's a growth and development study of the northwest mesa area.

Q By?

A Jose Luis Eglado.

MR. ARKIN: We offer it.

MR. KAUFMAN: Objection.

THE COURT: Sustained.

Q Do you know Mr. Eglado?

A Yes, I do.

Q At one time he worked for the Albuquerque Planning Department?

A Yes, he did.

Q Are you aware that at one time in 1963 that Mr. Eglado published a report in which he stated --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Are you aware that Mr. Eglado projected growth to the northwest --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Mr. Arkin, I will not let that in. I don't know who Mr. Eglado is. He sat down and wrote something. Put him on the stand. Unless it is an official document such as the one you just put in.

MR. ARKIN: I understand that, your Honor.

If your Honor please, I would like to take just a moment at the side bar and make an offer of proof on this.

THE COURT: You may.

(At the side bar)

THE COURT: What is your offer?

MR. ARKIN: My offer is this. This man testified that he knows Eglado worked for the planning commission and that at one time Eglado published a study, a report in which he said the growth would be to the northwest and the city is bounded on three sides.

THE COURT: He wrote something.

I write a lot of things, too.

MR. ARKIN: The point here is to show the matter of public notice that people in his profession and elsewhere had contrary judgments and opinions.

THE COURT: Let him testify and be subject to cross examination. I will not let it in that way.

MR. ARKIN: Just for the issue of notice, not truth.

THE COURT: No.

MR. ARKIN: All right.

(In open court)

xx (Defendant Howard Friedmand and Henry Hoffman Exhibit EL marked for identification)

BY MR. ARKIN:

Q Do you recognize EL, Mr. Carruthers?

A Yes.

Q What is that?

A It's the guidelines for public systems for a portion of the area west of the Rio Grande prepared by the Albuquerque Bernalillo Planning Department.

Q That is an official document?

A Yes, it was adopted by the city and county.

Q You know that?

A Yes.

MR. ARKIN: We offer it.

MR. KAUFMAN: May I see it?

(Pause)

MR. KAUFMAN: No objection.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit EL received in evidence)

Q It is a fact, is it not, Mr. Carruthers, that there is presently going on planning for the expansion of utilities into the west mesa, is that so?

A For a portion of the west mesa, yes.

Q Indeed, up to the northernmost boundary of the Bernalillo County line?

A By the city of Albuquerque?

THE COURT: That is what he is asking you.

A No.

THE COURT: I gather, Mr. Arkin, that this Exhibit 53 embraces the area served or to be served by such utilities.

Is that correct?

THE WITNESS: To be served, but without a time frame.

THE COURT: That is right.

MR. ARKIN: Excuse me one moment, your Honor.

THE COURT: Yes.

(Pause)

Q Mr. Carruthers, what has historically been the density, the population density per acre for the city of Albuquerque?

A The density --

THE COURT: When you say city, you mean

city limits?

MR. ARKIN: Yes, sir.

A What period? It's not been the same.

Q I understand that. Let's take from 1960 to 1976, why don't we do it that way.

THE COURT: You think that is too big a period?

Q Let me take 1960. Do you want me to take it year by year, I can do that.

A I cannot quote you the population densities year by year.

THE COURT: He is in the middle of a statement, Mr. Arkin.

MR. ARKIN: Excuse me.

Q Would you like to give me a median?

A I think I would have to look at the figures that I have. I have some denisty figures.

THE COURT: Go ahead and look at them.

A I have the present population density within the city limits.

THE COURT: He wants to know going back. Do you have any earlier figures than those?

THE WITNESS: I would have to look it up in the census material. I don't have that with me.

Q Do you know how many acres were within Albuquerque city limits for, say, 1962?

A Yes.

Q How many?

A In 1962 the city of Albuquerque there were 42,508 acres.

Q What was the population of the city of Albuquerque in that same year?

A There was a 1960 census. I don't have a figure in front of me for '62.

Q Why don't you give me an approximation then, sir, as a city planner?

A Can I look --

Q Look at anything you like, sir.

THE COURT: Sure.

(Pause)

A The 1960 population was 262,199 for the whole Albuquerque standard metropolitan statistical area.

Q Which exceeds the city limits, is that correct?

A That is right.

Q The city,as a city planner do you have any knowledge of the approximate population for the year 1962?

A You would have to deduct about 5,000 for the east mountain area and 45,000 for the valley areas, I think.

Q So somewhere around 210,000, 215,000 within the Albuquerque city limits?

A About that, yes.

Q For the year 1962?

A Yes.

Q Would you want to divide the acres within Albuquerque city limits within to the population for Albuquerque and what figure do you come out with?

A It's approximately five people per acre.

Q Do the same thing for 1970, eight years later. What were the acres within Albuquerque city limits in 1970?

A The acres in Albuquerque were 51,603.

Q And the population?

A The population -- I don't think I have got the population.

THE COURT: Have you the 1970 census?

THE WITNESS: That is what I am looking for.

A 1970 census for the city of Albuquerque was 270,260.

Q Do the same division.

A Okay. It's again a little over five people per acre.

Q Do it for 1975.

A In 1975 there were 56,395 acres.

The population density is 5.35, I believe.

Q You would agree, would you not, that Albuquerque is essentially or predominantly a single family home part of the world?

A Yes.

Q That is the way people like to live down there,isn't that so?

A The majority.

Q I take it you would also agree that any city in this country has vacant land.

A Yes.

Q Cities don't grow in a linear fashion, they leapfrog, is that not so?

MR. KAUFMAN: I object, your Honor, to testimony about all cities.

THE COURT: Overruled.

Do you know or can you say?

A All cities don't leapfrog, no.

Q Most cities leapfrog, don't they?

A Most cities nowadays are trying very hard to avoid that.

Q I am asking you yes or no. I am not asking you for wishful thinking.

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained. Strike the comment.

A In the western part of the country I would say yes to that.

Q We will confine ourselves to the west then.

The vacant land factor in, say, western cities, large western cities, runs between 10 and 20 percent, isn't that so?

A I could only wager a guess.

THE COURT: Then don't do it. What about Albuquerque?

THE WITNESS: Albuquerque's vacant land?

THE COURT: Yes. Within the city limits.

THE WITNESS: Okay, within the city limits right now --

THE COURT: Right.

THE WITNESS: The city has 15,565 acres vacant out of a total of 56,584.

Q You are familiar with the x-ray document?

A Yes.

Q You had read that document?

A Yes.

MR. ARKIN: Do you have your exhibit, Mr. Kaufman, the x-ray document.

MR. KAUFMAN: 41.

MR. ARKIN: I know it as x-ray.

Q I show you page 107 in Government's Exhibit 41. Reading page 107, does this refresh your recollection as to whether you had any knowledge as to the average vacancy rate, the usual vacancy rate in cities?

THE COURT: What do you mean vacancy rate?

Q Vacant land rate.

MR. ARKIN: I don't mean apartments, your Honor.

A Yes.

Q So, if I said 20 percent land vacancy rate you wouldn't disagree with that as being a common or usual rate, is that correct?

A It's common, yes.

Q And 47 percent for smaller cities, isn't that correct?

A In small communities, yes, according to Bartholomew.

Q That is a natural phenomonon of cities?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A That is true.

Q Despite the fact that a city may plan or desire or have a policy of infill, utilizing vacant land, cities don't necessarily grow that way, isn't that correct?

A THE COURT: That has two prongs to it. They may not grow that way but there is now a present plan to try and create infill as a result of that.

MR. ARKIN: I will ask it with two questions then, your Honor.

Q You as a city planner in Albuquerque as an example, are aware of a policy which Albuquerque had going back as early as 1964 or '5 to infill vacant land within the city, isn't that so?

A Yes.

Q Underlying that policy is a desire of the city fathers to increase the tax base, is that not so?

A Yes.

Q It helps the taxing authorities?

A Yes.

Q But despite that policy of the city of Albuquerque, as an example, the city didn't necessarily grow by utilizing vacant land within the city, but grew in other directions, too, didn't it?

A It did.

Q And I take it that as a land planner or a city planner you have some familiarity with what happened in other cities in the west at least?

A Yes.

Q Have you attended planning conferences?

A Yes.

Q You keep in touch with city planners in other parts of the world?

A Yes.

Q Like in Los Angeles?

A Yes.

Q Phoenix?

A Yes.

Q Tuscon?

A Yes.

Q Denver?

A Yes.

Q And their experience in this regard is no different than yours, is it?

A Not much.

Q Not at all, is it?

A I can't answer that with a simple yes or no.

MR. ARKIN: Withdrawn.

Q Now, taking the average density of a city such as Albuquerque, do you know what the projected population was for the year 1985 in the 1985 land use plan?

A For the total area covered by that plan?

Q Yes, sir.

A 825,000 people, yes.

Q Now, if you divide the average density of five into 825,000, how many acres do you need to encompass that population utilizing that denisty as your working hypothesis?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Why?

MR. KAUFMAN: Because the average density assumes developed and undeveloped land and that is now what Mr. Arkin is referring to.

MR. ARKIN: I laid a foundation for that, your Honor.

THE COURT: Go ahead.

Q Please answer, sir.

A That population figure was based on the 212,000 acres in the total study area.

Q Do you have -- what, if you know, what was the projected population or portion of the 800 some odd thousand population projected for the city limits of Albuquerque?

A I guess I would have to look that up. I don't remember what it was for the city of Albuquerque.

Q Please do.

(Pause.)

A The population projections in this report relate to the total study area.

THE COURT: Do you have any indication for the city of Albuquerque?

THE WITNESS: I don't find it here.

Q As a planner for the city of Albuquerque, as you have been since 1957, you say?

A Yes.

Q You must have had some estimate or projection in 1964 or '5 as to your total population within Albuquerque municipal city limits for the year 1985.

THE COURT: Is that a question?

MR. ARKIN: Yes. It's a question.

A We did have.

Q What were those estimates?

A We assumed that the majority of the population was going to be within the city of Albuquerque and gradually increasing in proportion to the population outside the city of Albuquerque.

Q What proportion did you project of the 835,000 population would be within Albuquerque city limits?

A Again, I don't have a projection for the city of Albuquerque right here in front of me. I don't have those figures.

Q Would you on Government's Exhibit 1075 trace for me, if you can, these 212,000 acres which you say were covered by the 1985 land use plan?

A It covered this area -- I am sorry -- it covered to the county line along here. It covered Paradise Hills and then down along this west side by the volcanos. Down to almost the county line. Then across including the southeast mesa and up along the city limits line here.

Then east to include all of the Sims property. Then northward -- all of this area and then along the Indian grant lands, the Siandia Indian grant lands along the north side and then it went northward to include the village of Corrales in this area here on the west side of the river.

Q Corrales which immediately abuts the Rio Rancho property, is that correct?

A Yes.

Q This 212,000 acres -- you can sit down now, if you would like to. This 212,000 acres which you are talking about which was in the study area was projected to have 835,000 in population, is that correct?

A 825,000. 825,000 in population, excuse me.

Q Assuming as a working hypothesis that the historic density, the median density for population of Albuquerque from 1960 to the present date remained about the same, almost all of those 212,000 acres would be used, would they not?

A At five people per acre?

Q Yes, sir.

A Yes.

Q Now, I want to stand over by the map and ask you to help me.

Am I correct in pointing to the boundary line or property line of Rio Rancho Estates, as I do here?

A Yes.

Q By the way, recently, I believe in 1975 or '76, the city of Albuquerque planning commission have planned, established urban areas up to the boundary line of Rio Rancho, have they not?

A Yes.

Q Now, let's take the year 1970. I will be asking you questions about that year, do you understand that?

Take the year 1970, looking over in the lower left-hand corner, the southwestern quadrant on this mosaic, what portion of that southwestern quadrant is comprised or consists of the Atrisco grant?

A A very large portion of it is the Atrisco grant.

Q Does it start about here?

A From about there.

Q Down to about here?

A Farther south.

Q Farther south?

A Yes, a little bit further.

Q You agree that at least up until 1972 there was substantial legal problems with respect to the Atrisco grant, isn't that so?

A Yes.

Q And that title problems existed with respect to that, isn't that so?

A In some areas, yes.

Q In most areas?

A If you are referring to the total grant, yes, in most of it.

Q Which impeded development?

A Yes.

Q What is the total acreage of the Atrisco grant?

A I don't recall the total acreage.

Q Give me an estimate, if you know.

A I can't estimate that.

Q Do you know what percentage of that 212,000 acres which you were talking about just a moment ago it encompasses?

A No, I don't know the acreage.

Q Would it be at least 30,000 acres?

A I can't guess.

Q Are there any facts and figures within the Albuquerque city planning department with respect to the size of the Atrisco grant?

A There may be.

Q You don't know?

A That's something we don't use.

Q You agree it encompasses a substantial portion of the 212,000 acre study area of the 1985 land use report, is thatso?

THE COURT: What do you mean by substantial?

MR. ARKIN: I don't know either, but I am trying to get some tabulation. Should I use percentages, if your Honor please?

THE COURT: Obviously.

Q It would encompass at least 10 per cent, wouldn't it?

A About 10 per cent, I suppose.

Q Could it be more than 10 per cent?

A I would doubt it because the study area didn't go very far west there.

Q Say about 10 per cent. Let's say 20 some odd thousand acres.

A At most 10 per cent, yes.

Q Are you familiar with the Pajarito grant?

A Yes.

Q Where is the Pajarito grant?

A South of the Atrisco grant.

Q Was that included within your study area, too?

A A portion of it.

Q I take it you are familiar, too, with certain tax deed legal problems in respect to the Pajarito grant, isn't that so?

A Yes.

Q Those tax deeds legal problems have impeded development of the Pajarito area, isn't that so?

A Among other things, yes.

Q What are the other things that impeded development of the Pajarito area?

A There are no utilities in that area.

Q Anything else?

A There has been no push toward development in that area either.

Q The tax deed problems do exist there, don't they?

A Yes, in some portions.

THE COURT: Wait. How much of that -- I am not good at Spanish -- that Pajarito grant is embraced in the 212,000 acres you just outlined for us?

Q What percentage of the 212,000 acres?

A Maybe 5 per cent. Not even that.

Q Somewhere between 5 to 7 per cent?

A No, I think less than 5.

Q Around 5 per cent, all right.

Let's move north on the west mesa for the year 1970. When you get north of the Atrisco grant you run into certain areas which have volcanic base, isn't that so?

A. Yes.

Q Volcanic base which is not terribly suitable for development, am I correct in that?

A That's right.

Q Would you do me the service of outlinging on this mosaic, 1075, that area within the 212,000 acres as of 1970 which had volcanic base and therefore was not suitable for development as land which does not have that base?

A These are the five major volcanos right here. This land around them and over to the edge of the lava flow, which is the dark line on the photograph, is not well suited to development.

Q That land which is not well suited for development which we will call the lava area, what percentage of the 212,000 acres, if you know, Mr. Carruthers, does that encompass?

A It is very had to estimate a percentage, but Iwould say that it's not more than maybe 8 per cent, something like that.

Q About 8 per cent?

A Yes.

Q Do you know in the acres?

A No, I don't.

Q Let's move over to the southeastern quadrant. Am I correct that I am pointing to the right-hand side of 1075 and I am pointing to the southeast quadrant of Albuquerque?

A Yes.

Q Now, in the southeast are there any federal properties?

A Yes.

Q What properties are those?

A The federal government has a very large base and military installation, testing grounds and so on on the southeast mesa.

Q What are those called by name?

A Kirtland Base.

Q Kirtland Air Force Base?

A That's right.

Q What else?

A And what used to be referred to as Sandia Base. Now it is all part of Kirtland. Manzano Base.

Q Let's take them one at a time. Let's take the Kirtland Air Force Base. Where on this mosaic does it appear?

THE COURT: Was that in the 212,000?

THE WITNESS: A portion of it, but not all.

MR. ARKIN: I am getting to it, your Honor.

THE COURT: Let's get to it now. The theme of this questioning is to reduce the 212. Let's stay on it.

MR. ARKIN: Yes, your Honor.

A The Kirkland Base properties extend over to here and include this area here which is developed with housing and also the Siandia Corporation facilities and part of the Air Force, but not all of it.

Q How many acres does that comprise, if you know?

A I don't know.

Q Do you know what percentage of the 212,000 it comprises approximately?

A I don't know.

Q You have no idea at all?

A It is very hard to estimate that because the line runs in that study area, runs through it in two directions here.

Q If I were to say to you something like 6 or 7 per cent, would that refresh your recollection?

A That would just be a guess.

Q Don't you have those facts and figures as an Albuquerque city planner?

THE COURT: In his head?

A We don't use those things. We are not talking about development of those areas and so we don't have those figures.

Q Going due south of Albuquerque, you have the Isleta Indian reservation, isn't that so?

A Yes.

Q Do you know how large the Isleta Indian reservation is?

THE COURT: Is that in the 212,000?

THE WITNESS: No, it is outside.

Q Entirely outside?

A Entirely outside.

Q How far out?

A It starts about a mile or a mile and a half south of the boundary.

Q Are there any other indian lands or federal reserve lands in the south or southeastern quadrant we have not mentioned?

A No.

Q As we move up, we will call this the eastern side of the Rio Grande River --

THE COURT: Northeastern quadrant is what we have been calling it.

Q Before I get to northeast, may I finish southeast?

THE COURT: Sure.

MR. ARKIN: Good.

Q Is Montgomery Boulevard which separates the northeast from the southeast -- Central does that?

A Central.

Q Central. Would you tell me where it is?

A It is the one that angles off.

Q Over here?

A Yes.

Q Let's move into the northeast then.

What is this area to which I am directing the pointer right now?

A The Siandia Mountains. I don't know what you are pointing at there. It's the Siandia Mountains.

Q Would it help you if you stood over here so you can see? This is on an angle so everybody can see it.

This is the Siandia Mountains?

A The Siandia Mountains are here. This is the edge of it. The lower edge.

Q These particular foothills over here, do you believe they are suitable for development?

A No, the city bought them to prevent development from occurring there.

Q This land is out of development, is that correct?

A That's true.

Q Do you want to reserve that for its natural resource purposes?

A That's right.

Q And recreation?

A That's right.

Q And development, you would agree, based upon the 1975 mosaic, is right up at the edge of that land, is that not so?

A No. There is still some vacant land below that line.

Q I am looking at your red line.

THE COURT: That is Tramway Boulevard, isn't it?

THE WITNESS: The development line is an extension of that line right there and the city has acquired some of the land above that line, but there is still some developable land below it.

Q With respect to the city acquired land, that was within this 212,000 acre study, was it not?

A Yes.

Q How much did the city acquire?

A The city has bought 550 acres and is in the process of buying another 160.

Q With respect to the foothills which you say are not suitable for development, that portion which has not been purchased by the city, how many acres does that comprise?

MR. KAUFMAN: Your Honor, he hasn't established that the foothills were part of the study area.

THE COURT: The witness has indicated they were.

THE WITNESS: The acreage figures that I mentioned to you are the only ones that were included in the study area.

THE COURT: That's right. You have indicated the foothills were in that study area?

THE WITNESS: Only that portion of the foothills. The rest of the foothills are outside.

THE COURT: The question is how much is the foothills?

THE WITNESS: The question is how much of the foothills --

THE COURT: Is in the study area.

Q Is in the study area, the 212,000 acre study area?

A Okay. Approximately 870 acres.

Within that segment and then when you go farther north, as I mentioned earlier, the Sims property runs up to the Siandia Peak and there is a very considerable portion of that that is in the foothills and in mountainous areas which is not developable.

Q As we move north, in the northeastern quadrant, above that land which the city has acquired for preservation purposes or recreational purposes, you come into the Sims grant or Sims property?

A The Sims property, yes.

Q The Sims property runs from the -- would you outline the Sims property for me?

A The Sims property runs from this line here all the way up and around and behind back here.

Q A portion of the Sims property is unsuitable for development in any case, is that not so?

A The upper portion, yes, the part that is in the mountains.

Q Was the entire Sims property included within the 212,000 acre study?

A Yes.

Q How much of the Sims property is unsuitable for development because it is up in the hills?

A That's a little difficult to estimate. I can point to it on the map.

This area here is suitable for development.

Q I am asking you about the area unsuitable.

A That runs from about there to there.

Q About how many acres is that, if you know?

A That would be, I would guess, about eight square miles.

THE COURT: I think we ought to suspend for lunch.

See you at 2:20.

(Luncheon recess.)

AFTERNOON SESSION

2:30 p.m.

(In open court; jury present.)

GEORGE L. CARRUTHERS, resumed.

MR. KAUFMAN: Your Honor, I have just a few questions.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Do you recall, Mr. Carruthers, I showed you page 9 of the brochure "This is My Land" this morning?

A Yes.

Q That is a brochure that has some land transaction examples on it?

A Yes.

MR. KAUFMAN: If I may read just the start of the page, your Honor.

(Mr. Kaufman read from Government's Exhibit 388 in evidence to the jury.)

Q With respect to example A, Mr. Carruthers, with the heading "Northeast Section," it says, "Buena Ventura Addition, R-3 property, blocks 6 and 7, involving 6 lots 1 through 6, 6 lots bought in 1958, $33,000; 6 lots sold in 1963, $59,200; profit on $33,000 investment is $26,200, per cent of profit 79.3 per cent, per cent of profit for each year 13.2 per cent."

Mr. Carruthers, can you tell us where the Buena Ventura addition is?

A The Buena Ventura addition is located on Central Avenue and Eubank in the northeast section of Albuquerque.

THE COURT: You better show it on the map.

THE WITNESS: Buena Ventura is located right here. This is Central Avenue, this is Eubank (indicating).

Q In 1958, when the six lots were bought, what type of land was the Buena Ventura addition?

A It was zoned R-3, which is a high density residential zoning category for apartments.

Q When you say high density, what do you mean?

A High density apartments, that is, garden apartments in Albuquerque.

Q And was it zoned the same way in 1963?

A Yes, it was.

Q With respect to example C in the northwest section, the following appears:

"Quaker Heights area within a few blocks of Rio Rancho Estates involving 15 acres," and then it goes on to give the prices at which it was bought and sold.

Where is the Quaker Heights area?

A Quaker Heights is about -- it's on the northwest mesa. It's about five miles, five and a quarter miles south of Rio Rancho. It's in this area right here (indicating). That's Quaker Heights. It is very close to the University of Albuquerque.

Q Is it within a few blocks of Rio Rancho Estates?

A No, it is not.

Q With respect to example E, the following appears:

"Fronting Central Avenue near Four Hills Road involving ten acres, ten acres bought in 1958, $18,000, ten acres sold in 1959, $40,000, profit on $18,000 investment $22,000, per cent of profit 122 per cent, per cent of profit per year 122 per cent."

Can you show us where this property would be fronting Central Avenue near Four Hills Road?

A This is in the eastern part of Albuquerque. Four Hills Road is right here and this is Central area and this property is right there (indicating).

Q And in 1958, what type of property was that? What type of land was it?

A That was commercial property in that area.

Q In 1958?

A There was a zoning change for the property to C-2 zoning, which is a community commercial category in

Albuquerque in 1958.

Q Before it was C-2, what was it?

A Part of it was R-1.

This description doesn't give a precise legal description so I'm not sure exactly which parcel we are talking about.

MR. ARKIN: I ask to move to strike his testimony with respect to that example, because he is unable to give the precise zoning.

THE COURT: But you did hear the reason why not?

MR. ARKIN: Because the description in the document is not precise enough according to --

THE COURT: That's right.

MR. ARKIN: I understand. Therefore, he cannot testify --

THE COURT: I will take what he can give me based on what you published.

Q And what is C-2 type zoning, Mr. Carruthers?

A It's the community commercial zoning that is used along most of the major streets in Albuquerque. It covers the full range of commercial uses, except for the very intensive ones or the heavier industrial type.

THE COURT: Did the zoning change between the time that parcel was bought and the time it was sold?

THE WITNESS: There was a zoning change in the area, but part of the area was commercial before, part of it was not.

THE COURT: And you can't tell --

THE WITNESS: From that description --

THE COURT: -- from that description which portion of the zoning area that property lay?

THE WITNESS: I cannot.

Q When was the zoning change, Mr. Carruthers?

A There was a zoning change in December of 1958.

Q So that by 1959, it was all zoned C-2, is that correct?

A Again, I don't know what the total area is here. I don't know which side of Central, because this report does not indicate which side.

Q With respect to example F, the following appears:

"Airport Road between Central and Airport involving five acres."

Can you show us where that location is on the photograph?

A Airport Road is in this area.

There was at one time a Cutter-Carr Airport located in this area. It was a small private airport (indicating).

West Central Avenue is here, Coors Road is here and Airport Road runs between Central Avenue and the airport property.

That property was zoned M-1 at the time when original zoning was adopted in Albuquerque in 1954.

THE COURT: And is still M-1?

THE WITNESS: Yes.

THE COURT: And what is M-1?

THEWITNESS: That is industrial zoning.

MR. FLEMING: It is more than 1933, your Honor.

MR. KAUFMAN: That's my next question.

Q This says five acres bought in 1933.

Do you have any idea what the land was in 1933?

A There was no zoning prior to 1953 in Albuquerque.

Q It then continues, it says, "Five acres sold in 1959."

What was it in 1959?

A M-1.

Q That is industrial?

A That's right.

Q Mr. Carruthers, there are three other transactions or land transaction examples given on here.

Have you been able to either locate the property mentioned or determine what the zoning was at the relevant time?

MR. ARKIN: That is two questions. May we have one or the other?

MR. KAUFMAN: I will separate it, your Honor.

Q With respect to example G, Coors Boulevard between Foothills Drive and Equardo Road, do you have any idea where that location in the Albuquerque area is?

A It is in the southwest quadrant as it is indicated here, but I don't know precisely which 13 acres they are talking about.

Q With respect to Central Avenue near Eubank involving eight acres, have you been able to define what that is?

A No.

Q With respect to example D, Coors and Atrisco, have you been able to define that particular land?

A No.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may cross.

MR. ARKIN: Your Honor, in order to clarify the record, because we were talking about areas with the pointer and that doesn't make a very readable record at some point, I am going to ask the witness to use a different colored magic marker for the areas about which he has testified to before.

THE COURT: That can be done at the recess. He can merely add to the picture what he was referring to in his testimony and he can do it during the recess. The jury doesn't haveto watch him do it and we don't have to go over it the second time.

MR. ARKIN: Very well, we will do it during the recess, your Honor.

XXX CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q Mr. Carruthers, are you able to see this from here?

A Right.

Q Are there lands in the southeast quadrant which are held in trust for the University of New Mexico?

A In the -- there are some in the northeast quadrant.

Q Are you able to point out those lands held in trust in the northeast quadrant, then, for the University of New Mexico?

A There are some lands held by the university right here (indicating).

The university also owns the Winrock Shopping Center right here and leases that (indicating).

Q And these lands which you pointed to in the lower portion of the northeast quadrant which are held in trust , do you know what plans, if any, the University of New Mexico has for those lands?

A Well, part of that land has been developed and sold off, part of it is occupied by the Lerknert industrial plant located right here at I-40 east of Eubank Boulevard. And there is a hotel development partially completed on the northern part of that property. The remainder, the use of the remainder is undetermined at this time (indicating).

Q Do you have any knowledge, sir, as to whether a remainder of the land held in trust for the University of New Mexico is going to be used for university purposes at sometime in the future or at least it is projected to be used for university purposes?

A It is not projected, as far as I know, for university purposes.

Q I am going to be using that map. You might be more comfortable standing here (indicating).

As we go north we have already talked about the Simms property.

A Yes.

Q To the north of the Simms property there appears or there is an area called North Albuquerque Acres, is that correct?

A Yes.

Q And North Albuquerque Acres was at one time a development sold off?

A It was subdivided into approximately one acre lots in 1932.

Q And sold at that point?

A And sold off.

Q And at present, there are legal problems in respect to assembling those lots for development purposes, is there not?

A In parts of the area, yes.

Q Well, what parts of the area are there not legal problems in assembling the development?

A Portions of the area have been assembled and development has proceeded.

Q Why don't you first, if you will, outline on the mosaic Albuquerque Acres for his Honor and the jury.

A North Albuquerque Acres, again, runs from this line up, across the Indian pueblo boundary and down along I-40 to this point, the San Antonio Road (indicating).

The portions that have been assembled in large ownerships and started to develop are these areas here and here (indicating).

Q Which you have outside as developed, is that correct?

A There is also additional land that has been assembled.

Q How many additional acres have been assembled for development within North Albuquerque Acres and which have not yet been developed?

A I can't give you a precise acreage figure.

I know that there is another 320 acres in this location plus 160 acres here that are not developed; there is also additional land thathas been assembled by the owners of the airport around the airport (indicating).

Q For airport purposes?

A No, not necessarily.

Q But assembled, nonethelsss, by the airport people, you say?

A The same owners who own that.

(Continued on next page.)

Q How many acres all told are in north Albuquerque Acres?

A I don't have a -- I don't think I have a figure on that.

Q Do you know whether north Albuquerque Acres is included within the 212,000 acre area study?

A Yes it was.

Q What percentage, approximately, of north Albuquerque Acres -- strike that.

How many acres all together is north Albuquerque Acres, do you know that?

A I don't have an acreage figure for that.

Q You are able to outline it as you did before?

A Yes.

Q You have already done that. You will do it before the recess with the marker.

Do you know what percentage overall north Albuquerque Acres has as of this date, now, what percent has been developed in the north Albuquerque Acres?

I would say -- and this is a very rough estimate --something like 20 percent all together.

Q And 80 percent has not yet been assembled?

A I think that's about right.

Q North of Albuquerque Acres, is there the

the Sandia Indian reservation?

A Yes.

Q Would you please demonstrate or outline that for the jury?

A The south boundary of the Sandia Indian reservation is right here and it extends northward and includes this land here as well as some on the valley floor (indicating).

Q And it extends northward to the mountains?

A I don't recognize the north boundary.

It's very extensive.

Q Do you know how extensive?

A No, I don't.

Q Do you know whether that acreage was included within your 1985 study?

A No, it was not.

Q All of the Sandia Indian reservation was excluded?

A That's right.

Q Not one acre was included in it, is that correct?

A As I recall it, the boundary of the 1985 study went along the south boundary of the Sandia Indian reservation and went around it.

Q It sort of snaked upward in this direction?

A Along the river and then around the developed part, the agricultural area here called the Village of Corrales (indicating).

Q And your study excluded the Sandia Indian reservation from any development plan, is that correct?

A Yes.

Q Because at that time that area was not available for development?

A That wasn't the reason.

Q The Sandia Indian Reservation has now, you say, some development in it?

A It does have some development.

The Sandia Heights subdivision has been built. The first unit of it has been built over into the foothills area, which is right up in this area (indicating). That part of it is in the indian reservasion

Q Which is what you described as very expensive property?

A It's high-priced residential.

Q But you know that that property may not be sold, it is only leased, is that righ ?

A That's right.

Q And the people who bui t upon it must lease the property?

A That's right.

Q And when the lease expires, the house has to be taken off?

A The --

Q You don't know that?

A I don't know.

Q Okay.

North ofthe Sandia Indian reservation, are you familiar with that territory?

A Some.

Q What is that called? Is it designated by any particular plat or region?

A No.

Q Was the area of the Rio Grande River also included, that is, the Rio Grande riverbed itself, included within the 212,000?

A Within the total acres, yes, it was, within the bondaries I indicated?

Q Do you know what the gross acres of the Rio Grande River included within the 212,000 acres is?

A No.

Q You have no idea at all?

A No.

Q Do you agree that nobody lives on the Rio Grande riverbed?

A Yes.

Q And that makes up some percentage of the 212,000 acres?

A Yes.

MR. ARKIN: Will you mark this, Mr. Frezzo.

(Defendants Howard Friedman and Henry Hoffman Exhibit EM marked for identification)

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Q Mr. Carruthers, are you able to recognize EM for identification (handing)?

A Yes.

This is a report called the development potential of Albuquerque published by the Albuquerque Bernalillo Planning Department.

Q That is your department?

A Yes.

Q Do you know what date it was published?

A October 1972.

MR. ARKIN: We offer it, Mr. Kaufman.

MR. KAUFMAN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit EM received in evidence)

xxxx

Q Mr. Carruthers, referring you to page 10 and Figure 3 of Exhibit EM, what does this figure represent? (Handing)

A It represents the areas -- well, the title on it is "Arroyos," and it shows the water courses of major arroyos identified by the city and by the Albuquerque metropolitan area flood control authority.

Q Is it fair to state that this area which is used in Figure 3 is one which is not suitable for development?

A That depends on what you do with the drainage.

Q It has constraints in development, is that fair to say?

A Yes, it does.

Q Are you able to outline for us, with your Honor's permission, the areas on Figure 3 on the mosaic over here?

MR. ARKIN: May we do that, your Honor?

Q Use blue (handing).

A (Witness complies with this request)

THE COURT: Pardon me, Mr. Carruthers.

Has any of that land already been testified to as excludable from the 212,000 acres?

There is no point in putting it on if it is.

Mr. Arkin's questions have been directed up until now to show how much of the 212,000 acres were not developable, if that's a word.

He is now trying to, I gather, show some additional acres that are not involved. But if it is already excluded once, you can't exclude it twice.

MR. ARKIN: It was qualified already, your Honor. I want to --

THE COURT: No. It is not worth the time.

If he has already included various parts of the property, I don't want him now to draw arroyos in the property that has been excluded.

MR. ARKIN: That has not -- excuse me.

Q Referring to the area which is immediately below your blue line here, what area is this here? Is this the Simms property?

A This is north Albuquerque Acres.

THE COURT: We have already excluded that once. You can't exclude it a second time and it is useless to mark up that mosaic with any indications that are not necessary for the jury's consideration of the exhibit.

MR. ARKIN: All right. We will mark it up as North Albuquerque Acres.

Q Referring you to Figure 4 of Exhibit EM, what does this graph represent, sir?

A Physical constraints on development.

Q By that, what is meant?

A It includes the mountains, the volcanoes and flood plains of major arroyos and the Rio Grande River itself.

Q Do portions of the -- do the physical constraints as represented in this figure, are there any portions of those physical constraints which have not yet been excluded from the 212,000 acres we have spoken about?

A There are.

Q Could you draw in just those portions which have not yet been excluded?

MR. ARKIN: Would that be permissible, your Honor?

THE COURT: Unless he can tell us with some approximation of what is involved.

I hate to keep marking that up with so many lines and colors. Nobody will know what they mean.

MR. ARKIN: We will try to erace it and use only one color.

THE COURT: He is going to mark it up with some other colors during the recess.

See if he can't explain --

Q Can you explain, then, which of these physical constraints which appear in Figure 4 are not otherwise excluded from the 212,000 acres in respect to your prior testimony?

Do you know what I mean?

A Yes.

The major arroyo area down in here, which is called Harris Arroyo, I believe, has not been excluded previously (indicating).

THE COURT: Don't mark it. Just tell us how much it is, the way you have estimated the others.

THE WITNESS: That is a very difficult estimate to make, because it meanders all over the place.

Q This is a scaled mosaic. Perhaps youcan do it by merely using the inches on the scale.

A I will try.

(Witness complies with this request)

A It's approximately eight square miles, I would say, all together, which is times 640 acres.

Q Eight square miles times 640 acres?

A Yes.

Q And with respect to the greyed in areas in Figure 4 to the north of that particular arroyo, where do those appear on this mosaic? Would you point them out to this jury?

A One of them is right through this developed -- here where development has already occurred and the drainage has been taken care of in that area (indicating).

Another one is right in this area along that major arroyo (indicating).

Another one is along that arroyo (indicating).

And another one is up here along that arroyo (indicating).

In addition, there is the riverbed itself down through here, and the lava flow and the volcano --

THE COURT: You have excluded that already. You excluded the three arroyos in the Simms property.

MR. ARKIN: Your Honor, may I read a very short paragraph to the jury from this exhibit?

THE COURT: Yes.

(Mr. Arkin read from Defendant Exhibit EM in evidence to the jury)

Q Who is Verne Haggen?

A He was my immediate predecessor as planning director.

Q Would you tell me as of the year 1965 -- you were in the planning department as of 1965, were you not?

A Yes.

Q And do you know how many employees were in that department at that time?

A Approximately thirty.

Q Aside from draftsmen and secretaries and that kind of thing, how many planners were employed at that time?

A I don't recall right off the top of my head, but I would guess that it was somewhere in the neighborhood of ten.

Q Was there a man named Richard Vaughn?

A No.

Q Do you know who he is?

A He was on the city planning commission and later on the environmental planning commission.

Q He was one of the commissioners, in effect?

A That's right.

Q What about Mr. George, who was he?

A He was the immediate predecessor of Al Pierce as director of the council of governments.

Q But he was not on the commission?

A No. He was staff director.

Q Was Mr. Yguado also employed on the commission?

A No.

Q Was he a consultant to the commission?

A No.

Q Did he work for the city of Albuquerque?

A He did for, I believe, about two years.

Q What was his capacity, if you know?

A He was an assistant planner working under me.

Q He worked as an assistant planner under you?

A That's right.

Q But not for the commission?

A No. He was in my division or department.

Q How many assistant planners did you have under you, sir?

A I believe there were only two at that time. I don't recall exactly the staff changes that went on in that period.

Q Do you recall who their names were, aside from Mr. Yquado?

A Clifford Brew was there about the same time. This was about 1962, 1963.

I believe the staff names are listed on the 1985 land use plan, on the inside --

Q Was John Robert one of your planners?

A No.

Q Was he a planning commissioner?

A No.

Q Do you know what he was in the city of Albuquerque?

Do you know who he is?

A Yes.

Q Do you know what he was then?

A Well, he has held various positions in the Albuquerque area. At one time he worked for the state highway department, then he was the director of the Albuquerque metropolitan area flood control authority. I don't know exactly when he took that position.

nd 1b

Q You are familiar with the policies plan, Government's Exhibit 53-A?

A Yes.

Q I take it you have read it?

A Yes.

Q Does the policies plan, I am referring to this exhibit now, call for the development of satellite communities geographically apart from the urban areas?

A If and when necessary, yes.

MR. ARKIN: I have no further questions, your Honor. In the recess we will do the painting.

CROSS EXAMINATION

XXX BY MR. FLEMING:

Q Mr. Carruthers, you testified that you included the volcanic area in the 212,000 acres?

A In the total study area, yes.

Q Part of Kirtland Air Force Base?

A Yes.

Q And some arroyos?

A Yes.

Q The Rio Grande River?

A Right.

Q Paradise Hills and Volcano Cliffs?

A Yes.

Q Tell me, do you know the land at Rio Rancho?

A You mean am I familiar with what it looks like?

Q Yes.

A Yes.

Q Have you been there?

A Yes.

Q Does it have the problems of development which exist on the volcano lands?

A No.

Q Does it have the problems of development which exist with regard to Paradise Hills? Let me be more specific.

Am I correct that Paradise Hills has a sewage problem?

A Yes, they do.

Q They have a sewage problem which could impact the city of Albuquerque?

A The city has agreed to connect theirs --

Q Just answer my question.

Paradise Hills has built close to that volcanic area that you described, isn't that right?

A A portion of it is on that volcanic land.

Q It is built south of Rio Rancho?

A Yes.

Q It has sewage problems, isn't that right?

A Yes.

Q Because of those sewage -- those sewage problems pose some threat to the city of Albuquerque?

A Yes.

Q Because of those sewage problems the city of Albuquerque has decided to annex Paradise Hills to the city?

A No, the city has not decided to annex it.

Q What has the city decided to do with regard to Paradise Hills?

A The city agreed to connect their sewer line to the city's system that runs up to the Indian school in the valley. It has not decided to annex it because the people in that area have so far been opposed to that.

Q Rio Rancho has no such sewage problem, isn't that correct?

A I don't know.

Q Haven't you testified that -- have you testified in the grand jury?

A I don't know what Rio Rancho's sewer problems may be. I testified in the grand jury.

Q Did you testify in the grand jury that there was no similar sewage problem with regard to Rio Rancho?

A As far as I know there isn't.

Q Did you so testify in the grand jury?

A I don't remember that.

Q You also included the city of Corrales Heights in the 212,000 square acres, did you not?

A Yes.

Q Why didn't you include Rio Rancho?

A I don't know that. That boundary was determined mainly for transportation planning purposes. I don't know why Rio Rancho was not included.

Q There is no natural barrier between Bernalillo County and Sandoval County, is there?

A Well, I think it is fairly important that we didn't have actually planning jurisdiction over into that whole area.

Q You have planning jurisdiction five miles into Sandoval County, do you not?

A No, we do not.

Q Is Corrales Heights in Sandoval County?

A Yes, it is.

Q You included Corrales in your study?

A In the Albuquerque transportation planning area, yes, it was.

Q Is there any natural barrier separating Sandoval County and Bernalillo County at the point where Rio Rancho adjoins Bernalillo County?

A No.

Q No wall?

A No.

MR. FLEMING: Do you have Exhibit 41?

Q Would you turn to page 24 of Exhibit 41. Is there a map there?

A Yes.

Q Exhibit 41 is that an official document?

A Yes, it is.

Q Identify it again for me, would you?

A It is the Albuquerque metropolitan area x-ray and prognosis. It was the first land use planning study done by the planning department.

Q Is this the one that involved the 212,000?

A No.

Q But you were involved in this, too?

A I was in the department at the time, yes.

Q I hate to go back to this, but could you come down for just a moment again, Mr. Carruthers.

This Exhibit 41 issued what year?

A In 1962, if I recall, yes.

Q The map which appears on page 24 shows the volcanoes, right?

A Yes.

Q And it also shows the Atrisco grant. Am I correct it shows the Atrisco grant running from below the volcanoes all the way down to the Indian reservation?

A It doesn't show a boundary from the Atrisco grant at all.

Q The Isleta pueblo is the Indian reservation south of Albuquerque?

A That is right.

Q That extends how many miles below the end of this map, do you have any idea where that begins? Approximately.

A It's about another mile or so off the end of this map.

Q It extends all the way across, does it not?

A Yes.

Q So that -- Albuquerque here is separated from what is south of the Indian reservation?

A Yes.

Q How deep is that Indian reservation, that is running from north to south?

A I don't know.

Q Four or five miles?

A Yes, I would say about four miles.

Q Then there is private land in back of that or south of that?

A Yes, the area called Las Lomas.

Q There was testimony yesterday, do you know Mr. Pierce?

A Yes.

Q He testified about a 240,000 acre subdivision down near Belen.

A Yes.

Q Am I correct that is about 36 miles from Albuquerque?

A Yes.

Q And that is below the Indian reservation?

A Yes.

Q Looking back at the map in your document, am I correct that the land from the volcanoes, at least in depth, I am not talking about width, but from here down to the Indian reservation is identified as the Atrisco grant?

A That is all that it says on the map. It doesn't have a line for the boundary of the Atrisco grant on either the north or the south.

Q It has a line on the south which is the Indian reservation, isn't that right?

A There is the boundary of the Indian reservation shown, yes.

Q I just want to deal with all this blank here in the lower left-hand portion of this mosaic.

THE COURT: You mean the southwest quadrant. That is the way it has been identified.

MR. FLEMING: I agree, your Honor.

Q I will call it the southwest quadrant. I want to deal with all this blank land.

Am I correct that that is or was at one time the Atrisco grant?

A No, part of it is the Parijito grant.

Q It was both grants where at least at one time substantial questions existed with regard to title, that whole area?

A Yes.

Q I can't pronounce the second one.

A Parijito.

Q The Parijito grant, you testified this morning in response to Mr. Arkin that there are substantial title problems still existing there.

A In parts of that area, yes.

Q Now talking about the Atrisco, the rest of it, the Atrisco grant, isn't it correct that there are still substantial title problems with regard to the vast majority of the Atrisco acreage?

A The majority, yes.

Q Am I correct that the Atrisco acreage comprised about 55,000 acres?

A I don't know the acreage, but that sounds fairly close.

Q Am I correct that title problems exist with regard to approximately 50,000 of those acres?

A That could be.

Q Am I correct that just this year in Albuquerque, 1976, a lawsuit was filed by a company called North something or other?

A Westland.

Q Westland, I am sorry, a lawsuit was filed by a company called Westland to try to quiet title to those 50,000 acres?

A Yes.

Q That has just been filed?

A I believe there have been two suits filed, yes, sir.

Q Are you willing to give an opinion as to how that lawsuit is going to come out?

A No.

Q I want to go to the south. The valley you define, we are talking about that area around the river, isn't that right, from north to south?

A Yes.

Q I want to talk about the south valley. Am I correct that the south valley has the highest crime rate in Albuquerque?

A Yes.

Q Highest welfare rate?

A Yes.

Q Am I correct that the planners do not expect substantial development in the south valley?

A We did not recommend substantial development there.

Q And do not expect it.

A That's right.

Q Let's get to this planning space over here below Kirtland.

There is no question you cannot build houses on Kirtland, right?

A Right.

Q Am I correct that this blank space down here is state land owned by the University of New Mexico?

A It's state land, yes, that's right.

Q State land right down to the reservation?

A Yes.

Q So we have got volcanoes, Atrisco, I can't pronounce the other,the Indian reservation, the south valley and the state land, right?

A Yes.

Q Then we have got Volcano Cliffs and Paradise Hills, is that right?

A Yes.

Q Am I correct they had to blast, use dynamite to put in foundations at Volcano Cliffs?

A I believe both in Volcano Cliffs and in parts of Paradise Hills.

Q And Paradise Hills has a sewage problem which may threaten the city that you are trying to take care of that threat?

A All it requires is a connection to the city sewer system.

Q You are doing something about it?

A That is right.

Q You are not required to do the same thing about Rio Rancho, are you?

A No.

Q So far as you know Rio Rancho poses no sewage threat to the city?

A That is right.

Q Am I correct that they do not blast to put foundations in at Rio Rancho?

A As far as I know.

Q That is not volcanic land?

A That's right.

Q By the way, do you recognize Corrales?

A Yes.

Q You recognized the developed area of Rio Rancho?

A Yes.

Q There is a blank space in here, isn't there, from this photograph?

A Yes.

Q Am I correct that is a bluff. I had better change that, I am sorry.

I shouldn't talk like a westerner. Am I correct that that is a hill, right in here?

A There is a hill there, yes.

Q A substantial slope?

A Yes.

Q And not available for building?

A Part of it.

Q Unless you want to take a chance. It's not a good building site, is it, that area between Corrales and Route 528. I am sorry there is a little area --

A Yes.

Q On the east side of 528, but that is not a good area to build in there, is it?

A For part of it, yes, it's not entirely unbuildable.

Q Not entirely, but for the most part or substantially unbuildable?

A Yes.

Q Corrales is one of the, if I can use the word, preferred areas for a number of people who work in Albuquerque, isn't that right?

A Yes.

Q That is about three miles from Rio Rancho separated by land most of which is unbuildable?

A Yes.

Q Fair?

A Yes.

Q North Albuquerque Acres, is that at this blue line, does that show the top of it?

A Yes.

Q We are not worried about up here, are we?

A That is the Indian land.

Q So you have got all this blank space here which is North Albuquerque Acres, right?

MR. KAUFMAN: Objection, your Honor, that s not accurate.

MR. FLEMING: I don't want to get a pencil.

MR. KAUFMAN: It is not accurate, Mr. Fleming.

THE COURT: He says it is not north Albuquerque.

MR. FLEMING: I will have the witness do it.

Q Would you go ahead and sketch again North Albuquerque Acres?

A North Albuquerque Acres is here.

Q Right. If I could put on mark, then, Judge, could we put a bottom line on North Albuquerque Acres.

THE COURT: No, he has outlined it twice now to the jury.

MR. FLEMING: There is no line on the bottom.

THE COURT: That is an arroyo on the bottom and not the north line of North Albuquerque areas.

That blue line was to show it up with arroyos and those had been excluded by Mr. Arkin under his questioning. He has now twice shown the jury where North Albuquerque Acres are.

Q North Albuquerque Acres was purchased sometime in the thirties or twenties, I guess.

A I believe it was 1932.

Q 1932?

A I don't know exactly.

Q It was plotted up into lots?

A Yes.

Q It is owned by a lot of different people, isn't it?

A Part of it are, yes.

Q Hasn't there been traditionally a substantial problem with the development of North Albuquerque Acres, that acreage, because of the difficulty in getting the various owners together to sell a developable portion?

A In some areas, yes, but I don't think that is true of the whole area.

Q Let's take it in percentages.

Is it true of 50 percent of the area?

A Yes.

Q Is it true of 70 percent of the area?

A I think earlier we had estimated about 80 percent.

end t

Q True of 80 per cent of the area?

A Yes.

Q The portion that is developed has mobile homes on it?

A And permanent residential, single-family residential in this area (indicating).

Q Of the portion that is developed, the 20 per cent that is developed, what percentage of that 20 per cent are mobile home ports?

A Probably about 25 per cent.

Q Mobile homes?

A Yes.

Q How many individual housing units are in that Albuquerque Acres?

A I don't know that.

Q A couple hundred?

A I don't know right off the top of my head.

MR. FLEMING: All right.

Q Now then we have this construction in the northeast, is that correct?

A Yes.

Q And there have been these developments since 1969 I guess or 1967 which you have outlined, isn't that correct?

A Yes.

Q Now, how much is left to go excluding Albuquerque Acres?

A The Simms property, which runs down through here, there is about two-thirds of it undeveloped.

Q Isn't there some portion of that Simms property which cannot be developed because of configuration?

A It depends on how you handle the drainage.

Q Isn't there an arroyo problem?

A There are two major arroyos in that area, yes.

Q Flooding problems?

A They require treatment.

Q So for a developer to go in there, he would have to assume that responsibility for capital investment to cure that problem, is that right?

A Yes, like the others.

Q By the way, has the Simms family sold all that property or is it just available for sale?

A They have not sold all of it, to my knowledge. I think they still own some of the eastern part of it or it is in trust for the boys academy.

Q Who owns the Simms property now, the portion that has been sold?

A Various developers and, of course, much of it --

the developed part is occupied by people who own their houses.

Q I am talking about the undeveloped part. Who owns the undeveloped part?

A Several builders, home planning and development, Dale Bellamah owns some property. There are several other builders.

Q Dale Bellamah is building over in Taylor Ranch, isn't he?

A Yes.

Q In the northwest quadrant?

A Yes.

Q Is he building on property in Simms?

A He is building up in the North Albuquerque Acres. I don't think he is building on property he has at Simms right now.

Q Aside from that portion of the balance of the Simms property, how much is left before you get to the mountain, very much?

A There is another 1500 acres or so developable in this area here.

Q That is foothills, isn't it?

A No. It flattens out right in this area. The foothills come in closer to the city down here.

Q Who owns that area?

A That is also Simms property.

Q Is that available for sale?

A Yes, it is. We are currently considering a plan for that area.

Q Who is?

A A very preliminary plan.

Q The city of Albuquerque?

A Harmon, O'Donnell & Henninger firm is preparing a plan to present to the city of Albuquerque.

Q The city will buy the land?

A No, for private developers.

Q When do you expect that development to begin?

A I would say probably not for about eight years, seven or eight years.

Q So for the time being is it fair to say, then, that except for this piece of property here in Simms, having talked about all this empty space, Albuquerque has gone about as far as it can go?

A Aside from vacant land in the city, yes.

Q Excuse me?

THE COURT: Aside from the vacant land in the city.

MR. FLEMING: Right.

Q When did the Simms land become available for sale?

A As I remember it, the first plan was done by Harmon, O'Donnell & Henninger in 1958 and the land was available then.

Q At page 29 of the X-ray report, do you have it?

A Yes.

Q Do you have it?

A Yes, I do.

Q Do you see the paragraph under North Albuquerque Acres, under the caption "North Albuquerque Acres"?

A Yes.

Q Was it written in that public document in 1964, the second sentence from the bottom, North Albuquerque Acres, though similar topographically, suffers from a vast grid subdivision which is totally inadequate for development?

A Yes.

Q Has that vast grid subdivision changed in the last 12 years?

A Yes, parts of it. Parts of it have been replatted.

Q That is the 20 per cent you are talking about?

A Yes.

Q The 80 per cent remains as it was when in 1964 the city planners stated North Albuquerque Acres suffers from a vast grid subdivision which is totally inadequate for development?

A Yes.

THE COURT: What does that mean?

THE WITNESS: It means that the way it is laid out it doesn't recognize the existing drainage systems and it would haveto be reassembled and replatted in order to be utilized for present day development.

Q You testified this morning about vacant land -- I believe you just mentioned again vacant land within the city limits of Albuquerque, is that right?

A Yes.

Q I think this morning you said there was something like 16,000 acres vacant?

A 15,000.

Q 15,000?

A I think, yes.

Q When you wrote -- when you helped prepare the 1985 land use plan back in the early '60's, what year was it that that plan was prepared?

A Most of it in 1963.

Q So you prepared a land use plan for 1985 back in 1963?

A Yes.

Q Am I correct that back in 1963 you were talking about exactly the same thing, that is, filling in or developing vacant land in Albuquerque?

A Yes.

Q Am I correct that now in 1975 when you have issued a new report and a new plan, you are faced with the very same problem of filling in vacant land in Albuquerque?

A Yes.

Q As a matter of fact, the percentage of vacant land in Albuquerque within the city limits on a percentage basis has increased since 1963, has it not?

A A little bit, yes.

Q As a matter of fact, the density of population in Albuquerque city limits which was about five or so in 1965 or '6 has decreased to about 4.8 by the early '70's, isn't that right?

A Run that past me one more time, I am sorry.

Q The vacant land on a percentage basis has increased since in 1963 you said the solution to living in Albuquerque was to fill up the vacant land in the city limits. You have already said that, is that right?

A I did say that.

Q All right. Now, I am talking to you about density because your new plan projects a certain density for five different areas of development in this whatever you call it Albuquerque area, isn't that right?

A Yes.

Q One of the densities is three to nine units per acre?

A That's right.

Q What density was that?

A That was for the established area.

Q Established area?

A Which is basically within the city limits.

Q You used -- this morning you used the three unit estimate and three units would be about ten and a half people per acre, would it not?

A Yes.

Q As a matter of fact, as you testified, the average density back in the '60's was five persons per acre?

MR. KAUFMAN: Objection. Mr. Fleming is again confusing the distinction bewtween vacant --

MR. FLEMING: I can only ask one question at a time, Mr. Kaufman.

Q The density was five persons per acre back in 1965, is that right?

A Approximately, yes.

Q And that included all acres vacant and developed?

A Yes.

Q It was on that basis thatyou projected a capacity of ten people per acre for your new plan, that is, that the density on developed acreage ran about ten people per acre?

A Yes.

Q As a matter of fact, the density overall in Albuquerque has decreased since 1965, has it not?

A I believe it has slightly.

Q It has fallen from about 5.3 people per acre, per gross acre, down to about 4.7 people per gross acre, isn't that right?

A At the present time my figures are 5.3 people per acre gross.

Q Going back to your 1963 plan to use the vacant land for development, it is a fair statement, is it not, that it was your hope and your plan to fill up the vacant land within the city limits of Albuquerque?

A Yes.

Q You wanted people to move in there?

A Yes.

Q And the reason you wanted that was it would reduce the cost of servicing people who lived in the Albuquerque area?

A That's right.

Q Because it would be easier for the city to run utilities into lots which existed within the cit- than it would be for the city to run utilities to lots in outlying areas?

A Yes.

Q So it wasyour hope as a city planner to increase the density of life in Albuquerque?

A That's right.

Q For economic reasons?

A Yes.

Q Since that plan issued in 1963, the population of Albuquerque has increased about 21 per cent, isn't that correct?

A Yes.

Q Has that population increase been soaked up -- I will withdraw that.

Have you been able to put that population increase into the vacant land which existed in the city of Albuquerque in 1963?

A A large portion of it, yes.

Q If that is so, why has the acreage of Albuquerque increased about 30 per cent, that is the city limits?

A We annexed some additional land. Very substantially.

THE COURT: They had their own annexation program.

MR. FLEMING: I understand that, your Honor.

THE COURT: That is why it happened. Each year or every two years they did that.

Q In 1963, you were dealing with a proscribed city limits, were you not?

A That's right.

Q Which existed in 1963?

A That's right.

Q It was your hope to take the expanding Albuquerque population and put it into the vacant lots in that existing city limit?

A For the most part, yes.

Q And the population of Albuquerque since that time has increased 21 per cent?

A Yes.

Q My question is, has that increased population of 21 per cent taken up living within the city limits of

Albuquerque as those city limits existed in 1963?

A Almost entirely, yes, because the land that was annexed was the municipal airport in '65. There were large acreages annexed where people don't live.

Q When did you annex the Simms property?

A The Simms property has been annexed upon request by the developers as they are ready to with individual subdivisions.

Q My question is, when did you annex the Simms property?

A In small pieces -- not all at once.

Q Was it a part of the city limits in 1963?

A There were parts of the Simms property which were in the city limits, I believe.

MR. FLEMING: Your Honor, would this be a good time for a break so I can get this organized and finished off?

THE COURT: All right, we will have one.

MR. ARKIN: Your Honor, may we use the recess to make those paintings?

THE COURT: Yes.

MR. ARKIN: Thank you.

(The jury left the courtroom.)

THE COURT: Mr. Carruthers, you are going to indicate on that map the portions that you excluded from your 212,000 acres, the volcanic area, the Atrisco grant.

You recall this morning you said the Atrisco grant included about 10 per cent of the 212,000 acres. He would like you to mark that out.

MR. KAUFMAN: Your Honor, as I understood what Mr. Arkin wanted Mr. Carruthers to mark out were the boundaries of the study areas, the 212,000 acres.

THE COURT: No, he wants him to mark out those portions that the witness says were not developable within the study.

MR. KAUFMAN: I don't think the witness has said that. Mr. Arkin has said it.

THE COURT: No, the witness has said so. He says you can't build on volcanic areas.

MR. KAUFMAN: Your Honor, I think this then should wait until the end of redirect because on redirect I intend to establish that the point Mr. Arkin hopes to make he is not making; that the witness has not said that those areas of land --

MR. ARKIN: If there is any discussion it should not be in the presence of the witness, if your Honor please.

THE COURT: I don't think it makes a darn bit of difference.

The witness has said that the Atrisco grant includes about 10 per cent and he said that in a large majority of the Atrisco grant there are still title problems.

MR. KAUFMAN: That's correct, your Honor. I don't think the witness will say that that land is not capable of development.

THE COURT: Obviously, if there are title problems, nobody is going to buy it and that's the defendant's argument. You may argue the other way.

MR. KAUFMAN: Your Honor, at one point in time all the Atrisco grant had legal problems. There is now development in Snow Vista, which occurred in 1959.

THE COURT: But that doesn't mean that as long as there are legal problems existing that developers will buy it, does it?

MS. HYNES: Your Honor, the witness is indicating that that is not his testimony. He is not saying that that is not developable land.

He is saying that there may be legal problems and the point is that there may be legal problems and at one point he said during his answers to Mr. Arkin, "But the push hasn't been in that direction," and the testimony will be that if there was a demand for it, the legal problem would resolve itself and then there is development. I think that should be at least explored before we start marking up this map. I have no problem with marking up the map once we get straight what the testimony is.

(Continued on next page.)

THE COURT: Well, he said the city bought 650 acres that included the 212,000 acres that are not includable.

MR. KAUFMAN: That I have no argument with.

THE COURT: He says portions of the Simms property are included that are not developable.

MR. KAUFMAN: The part I think that is above the 10 per cent line, if that's correct.

THE COURT: He says the volcanic area, as I understand it, is not developable.

MS. HYNES: That already has utilities and has --

THE COURT: I said what the witness testified to this morning.

MR. KAUFMAN: Mr. Arkin says it developed different because of the lava flow and the witness said yes, there are impediments to development. The witness has not said you can't build on it, and, indeed, Volcano Cliffs exists on the lava flow. They have roads there. One developer has already decided that you can build on the lava escarpment. Wehave to distinguish --

THE COURT: What about the Rio Grande riverbed?

MR. KAUFMAN: I don't think we will argue about that. We are talking about the water itself.

MR. ARKIN: May I be heard briefly on this, because as I understand the prosecution's case and the point which the prosecution hopes to make is that there was a misrepresentation by saying that Albuquerque was bounded on three sides by either physical or legal barriers, and the point of my cross examination was to establish the existence of these physical and legal barriers.

That defined in my mind, which may be presumptuous, to mean federal lands, legal reservations, land with title problems, land which has some legal constraint on development.

This is what the thrust of the representation was and that was the thrust of my cross examination.

I am not saying land of the federal government is not capable of development if the federal government were to give it up. I am not saying that. That's not what the defendants in their literature said, meaning the corporate defendants, of course, and it seems to me that only a portion of the barriers were ever represented as being physical, such as mountains or arroyos, and so, you know, what Mr. Kaufman is saying, I most respectfully say, does not make a great deal of sense here.

I think a legal barrier is just as significant as a physical barrier and that's what I asked him about.

MR. KAUFMAN: Your Honor, the defendants said that the Atrisco grant was incapable of development, that development could not go on the Atrisco grant, and when they were making those statements there already was development on the Atrisco grant. There was an industrial park, there was Snow Vista, so they were on notice that there could be development on the Atrisco grant.

The defendants' representation was more than Albuquerque is just surrounded by certain barriers, it was Albuquerque can only grow in one direction, and this witness and the previous witnesses have shown that Albuquerque, indeed, could grow in all directions and, indeed, the predominant growth was to the northeast, and the fact that there may be a problem with respect to land in different areas doesn't mean that it is incapable of development; and when Mr. Arkin says that there is a problem here, that is not the same thing as assuming the witness is saying that that land can never be developed, and just as with Atrisco, which had development on it as early as 1959 is true for this land that can be developed and it is misrepresentative to say that this land can never be developed at a time when development has already proceeded on that land.

MS. HYNES: Your Honor, the other point is on North Albuquerque Acres. The witness has testified at the present time 20 per cent of it has been developed notwithstanding the drainage problems. The testimony of the witness has also been that there have been subdividers who have gone in there and it has been replatted and they have taken care of the problems.

It is not the fact that there is an arroyo there which precludes that from ever being developed. There is an arroyo there and if you treat it properly it can be developed and it has been developed and 20 per cent of it has been developed at this point.

If there was a push and there was a need for more of it to be developed, then it would be reassembled.

The witness has also testified that there is another large parcel several hundred acres that has been reassembled and it hasn't reached the point of actually putting houses on it. They actually have taken care of those drainage problems. So these are real situations that can be taken care of and they are not forever impediments to development.

THE COURT: What about an arroyo in the southeast?

THE WITNESS: That land --

THE COURT: You said it covered 5,000 acres.

THE WITNESS: A large portion of that is

undevelopable, partly because it has sloped and flood problems and airport noise problems.

THE COURT: All right. So there is 5,000 acres out.

MR. KAUFMAN: Your Honor, we have no dispute with any particular piece of land that the witness will say cannot be developed at all. Our only dispute is that when Mr. Arkin makes a statement and then assumes the witness is saying it can never be developed and now he wants to mark it off, we disagree with that, because we don't believe that that's what the witness' testimony has been or will be on redirect.

Indeed, we will show that in those maps on the 1972 plan, I think it was, that showed the dark area of arroyos, that, indeed, since that time development has taken place in those areas, which is the best example that arroyo problems can be overcome if they exist.

MR. ARKIN: In the Atrisco grant, which is a substantial portion of the mosaic and a substantial portion of the southwest quadrant, its legal problems were to some extent, the extent I cannot give you a quantum on, to some extent resolved in 1972. That was the same year, if your Honor please, in 1972, when the advertising was changed to say not the only path of growth is in the northwest, but that a logical path was to the northwest, meaning that if you consider legal restraints or legal barriers as being legitimate or proper ones for somebody to consider in projecting or estimating or opining about the path of growth of any particular city or any particular area, you should be aware that with the redefining or the clearing up at all to some extent of the Atrisco grant, there was also a concurrent or approximately concurrent change in the advertising.

Now, it seems to me thatit is perfectly legitimate for us to show areas surrounding Albuquerque which have difficulty in development, some degree of difficulty in development, because based upon those difficulties, somebody can fairly and reasonably decently make a projection of growth in a particular direction avoiding those particular constraints.

I don't think we are dealing here in this kind of a case with absolutes. Obviously you have Pueblo Indians that live in sides of mountains and you have people living in the Arctic and with American ingenuity you can build homes anywhere.

The point is people looking at this area at a particular time in this century, the kinds of constraints I elicited from cross examination and Mr. Fleming on cross examination, I think, are perfectly legitimate ones from which we can make, I think --

(Continued on next page.)

THE COURT: I think that is an arguable point to the jury.

I can't see how I can stop him from doing it, because he should be free to argue to the jury, as you are free to argue to the contrary, that a developer coming in in 1966, 1967, 1968 and making representations based on conditions as they then existed is a jury question as to whether such action was reasonable under the facts as they then existed, and he is as free to argue to the jury that a person buying land which does not have such restrictions is more -- pardon me.

A person who wishes to buy land is more apt to buy land without legal restrictions than with legal restrictions.

You can argue the other way to the jury that the legal restrictions didn't seem to stop people in 1973, four or five, but that does not prevent him from making his argument to the jury.

MR. KAUFMAN: I don't disagree with that, your Honor. I think he has the right to make that argument.

My only dispute was with Mr. Arkin's intention to make markings on the map with the stipulation that these were areas that were --

THE COURT: I don't think that is a stipulation. That is something that this witness would have done if he had thought about it before lunch.

MR. ARKIN: If I had the magic markers.

THE COURT: You can take him on redirect through those very same areas and point out that they are developable or were or something happened to them since then. But I don't see how I can stop Mr. Arkin from making that argument to the jury. You argue the other way.

MR. KAUFMAN: I am not asking for that, your Honor.

THE COURT: All right.

(Recess)

CONTINUED CROSS EXAMINATION

BY MR. FLEMING:

XXX Q Mr. Carruthers, I want to give you Government's Exhibit 55, Albuquerque Bernalillo County Planning Department vacant land study, August 1973, and that is subcaptioned, "A survey of Albuquerque's Unused Lane," is that correct?

A Yes.

Q That has to do with city land?

A Yes.

Q Will you turn to the first page.

It is dated September 8, 1972. Do you have it?

A Yes.

Q This vacant land survey or planned study is addressed to the city manager and so forth, is that correct?

A Yes.

Q And does it state on the first page, "The fact that there are large amounts of undeveloped land within the Albuquerque city limits, however, should not be construed to mean that all this land is available for development at the present time".

A Yes, it does.

Q And it goes on to say, "It does indicate that considerable infill potential exists in Albuquerque and should be realized when the various obstacles to development of bypass land have been overcome," is that correct?

Then turning to the page, "Introduction," which is page No. 1 in the report or the study, the third paragraph or the last paragraph on the page, am I correct, that you stated, or at least the makers of this report stated therein:

"However, it is important to emphasize that the existence of large amounts of vacant land does not necessarily mean that such land is available today for development. It does mean that the obstacles and barriers to availability should be examined and identified, but this report does not attempt to cover factors such as improper zoning, title problems and speculative holdings."

Is that correct?

A Yes.

Q The vacant land in this report was characterized as either primary -- I will withdraw that.

The vacant land covered by this report was characterized by the planners as primary usability and secondary usability, is that correct?

A Yes.

Q And at page 3, primary usability is defined as all land suitable for development without adverse physical characteristics and with available utility systems, is that correct?

A Yes.

Q And then you note, availability was based on existence of water and sewer lines to the area, is that correct?

A Yes.

Q Is it true, then, that with regard to this vacant land in the city limits of Albuquerque, not all of that vacant land was serviced by water or sewer lines?

A That's right.

THE COURT: Is there any indication how much in the report?

THE WITNESS: Yes.

Q The city water engineer has indicated that there is a capacity to serve only approximately 1~~00,000~~ 1,000 acres of new development from presently programmed city water facilities, is that correct?

A Yes.

Q And that would cover 12,000 population, according to this survey?

A Yes.

Q And this is in 1972?

A That's right.

Q And secondary usability is slope too steep to build without modification, close proximity to arroyo, extreme vulnerability to flooding, lacking available utility systems, is that correct?

A Yes.

Q Now, going back, again, to the 1962 or '3 report, which I guess was called the 1985 land use report, you have testified that as a city planner at that time, you were concerned at that time, in 1962 and '3, with the same problem of filling up vacant land within the city limits?

A Yes, sir.

Q And did you testify that you had been successful in doing that just before the break? Did you testify just before the break - -

A Yes, I did.

Q -- that you had been successful in doing that?

A In some areas, yes.

THE COURT: In some areas.

Q I direct your attention to page of the 1972 vacant land study:

"The study shows that within Albuquerque's present boundaries, 14,030 gross usable acres are vacant. In 1962, the vacant land within the city limits totaled 20,059 acres."

Is that correct?

A Yes.

Q Figure 1 illustrates the 96,070 acres of vacant land today which are contained within the 1962 city boundaric.

Have I read correctly?

A Yes.

Q A considerable amount of land vacant in 1962 has been bypassed in favor of fringe area land.

Have I read correctly?

A Yes.

Q And that was truthful in 1972, was it not?

A Yes.

Q Now, Table 1 in this 1972 survey or study, vacant land study, lists vacant land by study areas, is that correct?

A Yes.

Q And on the east mesa or by the caption east mesa, if I may break in, does east mesa as used in this table include all of the land within the Albuquerque city limits east of the railroad tracks?

A Yes.

Q Whether it is north or south?

A That's right.

Q And you have reported 4,916 residential acres as vacant on the east side of the railroad tracks?

A Yes.

Q Now, do you know what percentage of that 4,916 acres you have designated as vacant east of the railroad tracks in 1972 was of primary usability?

A Yes, on page 15. In the east mesa -- well, it identifies primary land on the east mesa as 5566 acres, 58 percent usability of vacant land by areas.

Q Am I correct that that 5556 acres identified under east mesa on page 15 includes not only residential but commercial and industrial land?

A Yes.

Q In fact, I must be correct since the total residential acreage is less than that on the east side?

A That is right.

Q All right.

Do you know what percentage of the 4,916 vacant residential acres on the east side of Albuquerque city limits in 1972, what percentage of that was of primary usability?

A I do not find a breakdown in this report on that.

Q Do you know?

A I do not.

Q You do not?

In 1972 were you aware of a report by Richard

A. Anderson captioned single family land in the city of Albuquerque, a report to the Albuquerque Homebuilders Association?

A Yes.

Q Were you aware that that report stated --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Exhibit 41 is x-ray, is that correct?

A Yes.

Q Did you testify this morning that a majority of the men and women and children who live in Albuquerque or around Albuquerque live in single unit dwellings?

A Yes.

Q As a matter of fact, it's a vast majority, is it not?

A Yes.

Q As a matter of fact, it's at least 95 percent of the men, women and children who live in that area live in single unit dwellings, isn't that correct?

A That sounds pretty close. I think it was 97 percent at the time when this report was written.

Q Excuse me?

A I believe it was 97 percent when this report was written.

Q Are they building highrise apartments in Albuquerque?

A Not highrise, very few highrise apartments.

Q Are they building any?

A There were a lot of apartments built --

Q Are they building any highrise -- I am sorry.

MR. KAUFMAN: Your Honor, the witness was in the middle of an answer.

MR. FLEMING: I am sorry.

THE COURT: Wait, wait.

I gather Mr. Fleming feels you are not answering the question he put to you.

A Are they building right now?

THE COURT: The question is: Are they building any highrise apartments?

A Right now?

Q Right now.

A No.

Q Have they in the past ten years built any highrise apartments?

A Not highrise.

Q Have they built garden apartments?

A Yes.

Q How many units?

A I don't know right off the top of my head how many in the last ten years.

Q Now, I would direct your attention to page 31 of Exhibit 41, the x-ray document. That was prepared in 1964?

A No, 1961 and '2.

Q Okay.

Analysis of Albuquerque's land use statistics. This was at thattime the overall picture of the community that the statistics present was of a low density city with less than ten persons per developed acre, is that correct?

A Yes.

Q Average of three quarters of an acre per ten persons. I am sorry, less than ten persons per developed acre, is that right?

A What page are you on?

Q 31.

A Yes.

Q In residential use alone there was an average of three-quarters per acre for ten percent. Two-thirds of the developed area is used for residential purposes, 95 percent of which is in the form of single family dwellings.

Have those statistics changed at all since 1961 or '2?

A I believe they have. There has been a great deal of apartment development along Montgomery Boulevard.

Q Are you talking about garden apartments?

A Garden apartments, yes, 25 to 35 or 40 units per acre.

Q What percentage of the people in Albuquerque now live in single family units?

A I don't have the current figures. They would be in our housing study. I don't have those right now.

Q Would they be about 97 percent given the population growth?

A I think the proportion might be somewhat less than that.

Q Still around 95 percent?

A I think it's less than that now.

Q 50 percent?

A It's not that low.

Q Does there still remain a heavy bias toward single family development as stated in 1961 and '2?

A Yes.

Q Did you state that there were a number of reasons for this heavy bias, perhaps the most important are public taste and demand, relatively cheap and plentiful land, mass development techniques and on a large tract of land and FHA and VA encouragement of single family development?

A Yes.

Q Is it Exhibit 5 that has the acreage of Albuquerque city limits at any given time?

A Yes.

Q Is that before you?

A Yes.

Q Am I correct that in 1960 Albuquerque had 39,040 acres?

A 39,110.

Q 39,110?

A Yes.

Q Do you know whether the population was approximately 200,000 people at that time?

A Yes, it was approximately 200,000.

Q Would you accept the fact that that would work out to a density of 5.16 persons per acre?

A Yes.

Q Now, what was the total acres of Albuquerque in 1970?

A In 1970 the total acreage was 51,603.

Q We are talking about city limits now, is that right?

A Yes.

Q The population of Albuquerque city limits was approximately 240,000 people?

A Yes.

Q Would you accept that density based on those figures was 4.8 persons per acre?

A Yes.

Q For a decrease over that ten year period of time in terms of density?

A Yes.

Q While you were setting out to fill up all this vacant land?

A Yes.

Q Now, am I correct that the density of developed acres also decreased during that ten year period?

A I don't think I have a comparison of density of developed acres in front of me.

Q You think you do not?

A I do not. I think the density of developed acres would have increased during that period.

Q What was the total number of acres in Albuquerque in 1972 city limits?

A In the city limits, 53,587 acres.

Q The study, your 1972 vacant land study, showed that there were 14,000 gross usable acres vacant at that time, is that right?

A Yes.

Q So that would leave a developed acreage of how much?

A Approximately 39,000 acres.

Q Am I correct that the population in 1972 was approximately 300,000 people within the city limits?

A Yes.

Q Am I correct that application of those two numbers would produce a density per developed acre of 7.5 people?

A Yes.

Q That would be a decrease, would it not, from 1962?

A The 1962 figure I believe was lower.

Q The population in 1962 was about 201,000 people?

A Yes.

Q And the developed acres was about 20,354?

A Yes.

Q And that would figure out to a density of

9.88 persons per developed area?

A Okay.

Q So there was between 1962, when you set about to fill in the vacant land in Albuquerque, to 1972, ten years later, a decrease in density developed acres Albuquerque city limits from 9.8 people per acre to 7.5 people per acre?

A All right.

Q You accept that?

A Yes, sir.

Q Isn't it correct or is it correct, Mr. Carruthers, that despite your recommendations in 1962 that population growth in Albuquerque be forced into the city limits of Albuquerque,in fact you have not been able to achieve that result in the intervening 14 years?

A Yes.

Q That is because people want to live the way they want to live, isn't that right?

A That is one reason, but it's not the only one.

Q Another reason is that you can't get a developer to go in and take an acre or two or a ten acre plot in inside Albuquerque and commit to its development because of its price?

THE COURT: Because of its what?

Q Price, because of what somebody wants for it.

A That is very often the case.

Q In fact, there is a 160 acre tract of vacant land in Albuquerque and it can't be developed because nobody can buy it, isn't that right?

A Well, often very high priced by comparison with outlying land.

Q So having issued a report in 1962, which suggested that all of Albuquerque's expected population growth could be taken care of at least in substantial part by vacant land in Albuquerque, in 1975 you had to issue a report which said exactly the same thing, isn't that right?

A Close.

Q Close?

A Yes.

Q Has the price of land within Albuquerque city limits gone up?

A Some of it, yes.

Q Has the price of land in Albuquerque generally increased -- in the Albuquerque area generally increased over the last 15 years?

A Yes.

Q Is that true of the primary useable residential land in Bernalillo County?

A Yes.

Q Right up to the county line?

A Most of it, yes, sir.

Q Right up to the northwest?

A I am not familiar with the price of land in Paradise Hills. I don't know what that would be.

Q How about in Corrales?

A Corrales certainly.

Q Increased?

A Yes.

Q In fact, you have got this valley area you testified earlier before the recess that the south valley -- you do not have high expectations for development in the south valley, isn't that right? Did you so testify?

A I did.

Q Right. But you do have high expectations for development in the north valley, do you not?

A No, we don't want to promote high density development in the valley areas, in either the north or south valley.

Q Do you look forward to development of the northwest side of the river?

A Do you mean in the valley or on the west mesa?

Q Well, on the west mesa.

A Yes.

Q And from the valley as it has previously developed upwards towards the west mesa?

A Yes.

Q That will be a substantial area of Albuquerque's future growth?

A Yes.

Q Unquestionably?

A Yes.

Q What is AIDS in Albuquerque, what is AIDS?

A Albuquerque Industrial Development Service.

Q Is that a quasi-public organization?

A Yes.

Q Do you cooperate with AIDS?

A Yes.

Q In planning and so forth?

A Yes.

Q Consult with them?

A Yes.

Q Are you familiar with an evaluation of Albuquerque that was done for AIDS in 1971 by a company called Fantas or an organization called Fantas?

A Yes.

Q Did you find yourself in substantial -- or in agreement with a substantial part of the evaluation done by Fantas?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Did the organization adopt that report, do you know?

THE WITNESS: It was used for promotion of development in the Albuquerque area.

THE COURT: By that organization?

THE WITNESS: By that organization.

THE COURT: Objection overruled.

MR. KAUFMAN: Your Honor, if Mr. Fleming is offering it, he has to comply with 803-7, I believe it is.

THE COURT: Objection overruled.

MR. FLEMING: May I have it marked.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit EN marked for identification.)

Q I show you what has been marked EN for identification and I will ask if you recognize it as what I have been told is a Fantas Company or Fantas report to AIDS, evaluation of Albuquerque or a portion of it, I guess.

A I am not personally familiar with this report, I am sorry.

THE COURT: He is not personally familiar with the report.

THE WITNESS: No.

MR. FLEMING: I see.

Q You never read it?

A I don't recall reading it.

Q Anybody from AIDS ever discuss it with you?

A I discussed generally the report, but -- I mean the results of the report, but not the report itself.

Q I want to show you a paragraph, just read this to yourself, a paragraph which appears at page 179. This paragraph right here. Just read it to yourself.

MR. KAUFMAN: Your Honor, I object to this unless there is an offer of proof. It is not being done to refresh any recollection.

THE COURT: Let's see what happens after he reads it.

Q Did you ever discuss the content of that paragraph, which you have read, with anyone from AIDS in the course of your duties?

A No.

Q I address you -- you can read it to yourself -- the last paragraph on page 179.

A Yes.

Q I will ask you if you ever discussed the subject of that paragraph with anyone from AIDS.

A No.

THE COURT: I will withdraw the admission of that document, Mr. Fleming, in view of the witness' statement he never read it.

MR. FLEMING: I understand, your Honor. I did not offer it. I marked it and the witness was unable to identify it. I understand that.

THE COURT: All right.

MR. FLEMING: May I have Exhibit 51, please.

It is not in evidence, Mr. Kaufman.

Q Mr. Carruthers, Sandoval County is the next county north of Bernalillo, is that correct?

A That's correct.

Q Rio Rancho is located in Sandoval County on the county line or --

A Yes.

Q Its southern border is on the county line of Bernalillo?

A Yes.

Q Residents of Rio Rancho pay taxes to Sandoval County, don't they?

A Yes.

Q They don't pay them to Bernalillo County?

A No.

Q Am I correct that in the 1960's Bernalillo County was one of, if not the fastest growing counties in New Mexico?

A Yes.

Q Was it the fastest growing, do you know?

A I would say yes.

Q Am I correct that economic recession came to Bernalillo County about 1969 or '70?

A Yes.

Q As it did nationwide, to your knowledge?

A Yes.

Q Am I correct that since 1970 right up until today -- could you characterize the period from 1970 right up until today as a recessionary period for Bernalillo County?

A Not entirely. There had been some considerable apartment development during the early part of that period in Albuquerque. The more recent years have involved very substantial slow-down in all types of building activity for residential purposes.

Q To your knowledge, you know that is true with regard to housing starts across the country, don't you?

A Yes.

Q Putting it colloquially, is it fair to say that the period 1970 to today have not been good times for housing?

A That's right.

Q In fact, they have not been good times economically, is that correct?

A I think that's right.

Q Not only with regard to Albuquerque and Bernalillo County, but with regard to the nation generally?

A Yes.

Q Am I correct that after having been perhaps the fastest growing county in New Mexico during the 1960's, the growth rate of Bernalillo County began to slow dramatically in the '70's?

A Yes.

Q While it grew in 1971 and 1972, between '72 and '73 it only grew 1 per cent?

A Yes.

Q An I correct that precisely the same period of time Sandoval County became the second fastest growing county in New Mexico?

A That's correct.

(Continued on next page.)

Q Directing your attention to the 1975 land use report, and if you can refresh my recollection, what is that caption?

A The yellow -- I'm not sure which copy you are referring to.

This one here? Is that the one?

There are three parts.

Q Oh, yes. I was referring to the part that was first identified.

A It was the metropolitan areas and urban centers plan.

Q All right.

And am I correct that that was what you have characterized as the planning department's second attempt to do a comprehensive plan for the Albuquerque metropolitan area?

A Yes.

Q The first attempt was in 1962, right?

A Well, the 1985 plan came in between there. This was really the third attempt.

Q The third attempt?

A Yes.

Q And your desire remains the same to in fill Albuquerque city limits?

A Yes.

Q Do you recall an experience which the city of Albuquerque itself had in trying to assemble and develop a piece of property where there was individual ownership of various portions of it totaling about 160 acres?

A Yes.

Q And that was located on a major street in Albuquerque right inside the city limits?

A Yes.

Q Am I correct you spent years, actually since about 1957, trying to work with the owners and the real estate people and the developers to assemble that land?

A Yes.

Q And am I correct you have been unable to do so?

A There is some development on that property, but the total area is not developed at this time.

Q That has been about 20 years you have been trying to do it on city land within city limits, 160 acres, and you haven't been able to do it, is that right?

A That's right.

Q And doesn't the same problem exist with regard to that 80 per cent of Albuquerque, North Albuquerque Acres about which you testified?

A Very similar problem.

Q Very similar problem?

A Yes.

Q I think you have testified that it is your plan, also, to preserve the valley floor as it can be floored, that is, the river valley floor; is that right?

A To maintain a low density of development there, yes.

Q And keep that as a kind of rural,agricultural, residential sort of area?

A Yes.

Q And encourage the development up on the mesa areas where there will not be the same kind of conflict with community goals for development?

A That's right.

Q And the mesa area includes that northwest mesa area?

A Yes.

Q Leading up to the Bernalillo-Sandoval County lines?

A Yes.

Q Is it true that no title insurance company will give title insurance on the vast majority of the acreage in the Atrisco grant as of this time?

A I believe it is true.

Q By the way, within the city of Albuquerque itself, talking about city limits, do you from time to time have pollution problems within the city?

A Yes. A few days, a few hours in certain days of the year running essentially from the end of October into December.

Q Some kind of inversion that is caused by the mountains or something of that sort?

A Yes. That's true of over the whole metropolitan area, really.

Q We have the automobiles in the city, isn't that right?

A Yes. But the whole city sits in a --

Q Well, tell me, Mr. Carruthers, isn't it a fact that you have said before that one reason you want to in fill the city is to provide for transportation other than automobile transportation?

A Oh, yes.

Q And that's because of a pollution problem you have in the city? You want to keep the cars out of the city?

A That's part of it.

Q And isn't one of the reasons a lot of people don't want to live in the city is they don't want to live in the pollution?

A One of the reasons, I suppose, some people.

Q By the way, where do you live in the city?

A Very close to the center of the city.

Q What quadrant?

A The northeast, between the downtown area and the university.

Q Have you testified that they are developing portions of the Indian properties up north of North Albuquerque Acres?

A Yes.

Q Do you recall forgetting about that when you were asked?

MR. KAUFMAN: I object, your Honor.

Q Do you recall being asked -- you did testify in the grand jury, didn't you?

A Yes.

Q Back on June 17, 1975?

A Yes.

Q Do you recall being asked at page 23, "Have they, in fact, begun developing portions of the Indian property?"

And answering on page 24, "They have not."

Do you recall that?

A I don't recall it, but --

Q But what slipped your mind was that there were some very expensive homes that were built out there?

A Yes.

Q And they are very few and far between, are they not?

A It is a very low density development in a small part of it.

Q They are very expensive?

A Yes.

Q And they don't own the land, that is, the person who owns the house does not own the land?

A That's right.

Q And that is that big vacant area north of North Albuquerque Acres, right?

A Yes.

Q And east of the river?

(Continued on next page.)

Q Do you remember testifying about some examples of profit made on real estate contained in this book, Exhibit 384?

A Yes.

Q Do you know whether or not the profits made were, in fact, made as represented here?

A I do not.

Q Okay.

One of the examples had to do with Quaker Heights -- I almost said Quaker Oats -- Quaker Heights, right?

A Yes.

Q And am I correct that Quaker Heights is property which is comparable to property at Rio Rancho?

A Yes.

Q The Albuquerque -- do you call it the board of education down in Albuquerque or school system? What is the correct title?

A The Albuquerque Board of Education.

Q The city planning commission has not exercised any jurisdiction over Rio Rancho, is that correct?

A It has not.

Q And did not include it in its 212,000 acre study?

A That's right.

Q The board of education, though, in Albuquerque has established a school in Rio Rancho, has it not?

A Yes.

Q And has it also built some high schools in the northwest within the past ten years, northwest quadrant?

A Yes.

Q Didn't it build a high school in the northwest quadrant a few miles south of Rio Rancho in 1967 with the expectation that it would serve the area for a substantial period of time?

A I believe that is correct.

Q And did it not find out that it was insufficient to serve the area and decide that it had to build another high school closer to Rio Rancho beginning in about 1971?

A Yes.

Q And that was because of development in the west mesa?

A Yes.

Q The northwest mesa?

A Yes.

Q And as you have testified, the Albuquerque board of education has put a school in Rio Rancho itself?

A Yes.

Q Is that a primary school?

A Yes.

Q There is a post office up there, too, an official post office, I don't mean a post box; a post office in Rio Rancho now?

A Yes.

Q How does that work? Is that served out of Sandoval County or out of Bernalillo County, do you know?

A I don't know.

Q The bank has moved up to Rio Rancho from Albuquerque, put a branch out at Rio Rancho?

A That's right.

Q A major bank in Albuquerque has done that?

A Yes.

Q Lovelace Medical Clinic has put a facility up in Rio Rancho?

A That I'm not familiar with.

Q Do you know Lovelace Medical?

A Yes.

Q What is its representation?

A It's one of the major medical clinics in Albuquerque. It's a good one.

Q Is it one of the major medical clinics in the entire southwest?

A Yes.

Q And perhaps in the nation?

A Yes.

Q Compared favorably to the Mayo Clinic?

A For certain types of things, yes.

THE COURT: How much more do you have, Mr. Fleming?

MR. FLEMING: I have more than two minutes, your Honor.

I would think I have about fifteen --

THE COURT: May I suggest you take the papers home and go over them so when you come in tomorrow with paperclips we don't have to sit here waiting for you to turn page after page.

MR. FLEMING: Judge, have I been that bad?

THE COURT: Yes. At least a minute between each question.

We will excuse you until tomorrow morning at 10:00 o'clock.

(Jury left the courtroom)

MR. KAUFMAN: A few things, your Honor.

One, with respect to Mr. Carruthers' marking up the chart, he has outlined the study area boundaries.

We are going to get a transcript of this morning's session and work from the transcript and have him in blue ink do the parts that we were talking about earlier.

THE COURT: All right.

MR. KAUFMAN: Secondly, I will request with respect to Mr. Carruthers a short recess at the end of cross examination in preparation for redirect as was done with Mr. Pierce with the Court's permission.

THE COURT: All right.

MR. KAUFMAN: Lastly, your Honor, we have the film that the government would like to introduce probably sometime next week and your Honor has said that you want to see it first.

THE COURT: I will be in all day Saturday. Set it up in my chambers and I will watch it.

MR. KAUFMAN: Very good.

MR. FLEMING: I just have an apology to make, Judge. I was just reading along his grand jury testimony to try to see where I was trying to question him.

THE COURT: Take it home and put in paper-clips --

MR. FLEMING: I did have paperclips.

THE COURT: What did they do, did they

all fall off?

MR. FLEMING: No.

MR. HOFFINGER: Mr. Blum wants to go to the doctor. I was wondering if we can have him excused. I mentioned it to Ms. Hynes. I will be here, obviously.

THE COURT: In your absence, any testimony that will come in, you will be bound and protected by Mr. Hoffinger?

DEFENDANT BLUM: Yes, your Honor.

MR. KAUFMAN: Your Honor, one other matter.

You had said you wanted at least four days notice of the government's intention of offering the grand jury testimony of Mr. Friend.

We anticipate that being in the middle or the latter part of next week and --

THE COURT: You mean the portions that were submitted before?

MR. KAUFMAN: Yes, your Honor.

We will give you those designated portions by Saturday as well.

THE COURT: All right.

(Adjournment taken to Friday, December 10, 1976, at 10:00 o'clock a.m.)

end

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
George L. Carruthers (Resumed)	4382	4443		

EXHIBIT INDEX

Government	Identification	In Evidence
55		4402
53-A,53-B	4411	4411
53		4411

Defendant Daniel Friedman and Henry Hoffman	Identification	In Evidence
EJ	4445	4447
EK	4450	
EL	4453	4453

Defendants Chester Carity and Daniel Friedman	Identification	In Evidence
EN	4561	

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

December 10, 1976
10:00 A.M.

Trial Resumed

(In open court - jury present)

GEORGE CARRUTHERS, resumed.

THE COURT: You may proceed.

MR. FLEMING: Thank you, your Honor.

CROSS EXAMINATION CONTINUED

XX BY MR. FLEMING:

MR. FLEMING: Your Honor, I would just like to read portions of I believe it is Government's Exhibit 60. I don't think there is a need for the witness to follow me, although if your Honor would prefer that, I can direct him to the pages.

THE COURT: Not unless you need comment on it.

Q Would you again identify for the jury Government's Exhibit 60?

A Yes, that is the 1985 land use plan.

Q Again, when was that published?

A 1964.

Q Did the planning commission say at page 5 of that report, that is in 1964, "From all indications, further outstanding growth is in store for the Albuquerque area over the next twenty to thirty years"?

A Page 4?

Q Page 5.

MR. KAUFMAN: What column?

MR. FLEMING: The last column, the bottom of the first half paragraph.

Q "From all indications further outstanding growth is in store for the Albuquerque area over the next twenty to thirty years".

THE COURT: Do you have the place?

THE WITNESS: I don't think I have it.

Q Page 5 did I say or 4?

A You said 5.

Q Over here.

A Okay.

Q "From all indications further outstanding growth is in store for the Albuquerque area over the next twenty to thirty years".

A Yes.

Q That was your view?

A Yes.

Q Then at page I believe 9, did you report right down here, "United States Census figures show Bernalillo County has a median family income of $6,252 and the city of Albuquerque $6,624 for the year 1959. These figures compare with $5,200 for U.S. Metropolitan areas".

A Yes.

Q That was correct?

A Yes.

Q Then at page 11, you wrote there, "A turquoise sky, bright sunshine, clean, clear air, Ernie Pile", that is the war correspondent?

A Right.

Q Ernie Pile wrote "It is so bright and you can see so much of it, half the horizon is yours in one glance just for the looking and the distance sort of gets into your soul and makes you feel that you, too, are big inside".

The planning commission included that in its report?

A Yes.

Q Over in text on that page: "Albuquerque is situated in the heart of the so-called southwest sun country with mild weather yet with healthy sea zonal changes. Albuquerque's climate has attracted people for many years. Much of Albuquerque's early history and growth was based on a climate favoring health seekers looking for mild weather dry air and ample sunshine."

Yes.

Q Then continuing in the second paragraph. "Temperatures are never extreme, summer or winter. Normally a snowfall of an inch or more falls about five times a year, each time melting within a few hours.

"In contrast, however, at LaMadera 8,600 to 9,600 feet of the east slope of the Sandia Mountains a few miles east of the city sufficient snow accumulates for skiing from mid-November to March"; and that was correct, was it not?

A Yes.

Q The next page, page 12, this paragraph:

"Daily temperatures vary considerably but extremes are rare. Summer daytime temperatures may be warm but 100 degrees is reached on only about three days a year. Summer nights invariably are cool and comfortable."

Is that correct?

A Yes.

Q "Winter daytime temperatures average about 50 degrees with only two days a year that the temperature does not rise above the freezing point. Nighttime temperatures rarely drop below 20 degrees", is that correct?

A Yes.

Q "Humidity is relatively low averaging about 43 percent. June our dryest month averages 20 percent. The remainder of the year the warmer part of the day averages 30 percent," is that correct?

A Yes.

Q At page 19, directing your attention to this paragraph:

"Prior to 1940 Albuquerque's growth followed the lines of early development in the valleys and along the main arteries. The 1940's saw expansion to the southeast heights brought on by the enlargement of Kirtland and Sandia bases."

Kirtland is the air base?

A Yes.

Q The valley areas filled in during this same period, that would be the 1940's?

A Yes.

Q "During the 1950's large tract development in the Northeast Heights dominated construction," is that correct?

A Yes.

Q And then finally at page it looks like 43, right here: Did the commission report "Implementation may be the hardest part of planning. It requires more than the professional services of a planner It requires the action of people both public and private." Is that correct?

A Yes.

Q Did you mean by that that the effect of implementation of your plan would depend at least in some part and perhaps some substantial part upon the cooperation of the residents of Albuquerque?

A Yes, very much so.

Q And where they wanted to live?

A Yes.

Q On the exhibit which is the mosaic photograph taken in 1967 -- do we have that?

THE COURT: Here, 1074-A. It is marked in the upper right-hand corner.

Q 1074-A. You marked out with a red line development which had taken place between 1959, the date of the mosaic, the photograph marked 1973-A, and 1967; is that correct?

A Yes.

THE COURT: I think technically what he did on both was to mark the development, the existing development on the photograph and then compared one with the other to indicate the increases.

MR. FLEMING: I think that is correct.

Q I am directing your attention to the indicated increases as you indicated them between 1959 and 1967.

Am I clear?

A All right.

Q Do you know in what years 1959 to 1967 that increase in development took place?

A There were increases in each year.

Q Do you know what percentage of the increase in development -- I am sorry -- do you know what percentage of the increase in development from 1959 to 1967, what percentage of that increase in the Northeast Heights had taken place by 1965?

A I don't think I can answer that question.

Q You would be guessing?

A Yes.

Q Would the same be true with regard to whatever increases in development you have shown in the northeast between 1967 and 1975, that is, you would not be able to place precisely when that development took place?

A Some parts of it I could tell more precisely, I think.

Q Can you tell what percentage of the development on the northeast, which you have indicated took place between 1967 and 1975, what percentage of that development had taken place by 1971?

A The percentage of the total development?

Q The percentage of the increment, the increase between '67 and '75 in the northeast. Let me be very clear.

I am talking about what you identified as increased development in the northeast between 1967 and 1975.

My question is: Can you on a percentage basis tell us what per cent of that increase during that period of time took place up to and including 1971?

A No, I don't think I can. I would only be guessing if I tried to separate them.

Q Has there been a decline in housing starts since 1971?

A Yes.

Q Would it be fair to state, then, that at least some percentage of the increased development in the Northeast Heights between 1967 and 1975 occurred before housing starts began to decrease in 1971?

A Oh, yes.

Q Would it be fair to say that a substantial portion of the increased development between '67 and '75 had taken place up to and including '71?

A Yes, I think so.

MR. FLEMING: May I have the land use map of 1985, Mr. Kaufman?

MR. KAUFMAN: It is right here.

MR. FLEMING: What is this exhibit?

MR. KAUFMAN: 60-B.

Q Mr. Carruthers, could you come down. This is Government's Exhibit 60-B.

Am I correct that this is -- of course it's the land use plan for 1985, population estimate of 825,000 people, Albuquerque, New Mexico, is that correct?

A Yes.

Q This is a projection of what the planning commission planned for Albuquerque development by 1985 projecting a population in 1985 of 825,000 people, is that correct?

A Yes.

Q Am I correct that it excludes development of North Albuquerque Acres?

A It does.

Q This was your planning back in 1964, I guess you said?

A That's right.

Q Am I correct that it excludes development of the Atrisco grant?

A Not entirely.

Q In substantial part?

A Actually it includes a substantial part of the Atrisco grant.

Q It includes a substantial part of the Atrisco grant?

A The bigger part is outside of it.

Q The bigger part is outside --

THE COURT: That isn't the question, I don't think, Mr. Carruthers. The question is, if you take the Atrisco grant as a whole, how much of it have you indicated would be developed?

THE WITNESS: There is altogether about, I guess, eight square miles. That is times 640 acres, eight times 640.

THE COURT: What would you estimate the entire Atrisco grant to be?

THE WITNESS: The total grant, I believe, is 55,000 acres, but very little of that was within the study area.

THE COURT: I think that is what Mr. Fleming wants to point out.

Q 640 times eight --

THE COURT: 5100.

Q About 5,000 acres. So you projected use of about 5,000 of the 55,000 acres of the Atrisco grant, is that fair, ball park?

A We did show some vacancies within that.

THE COURT: Let's say 5,000 acres. I don't want -- is that a figure that is agreeable to you, Mr. Fleming?

MR. FLEMING: Yes, sir.

Q Am I correct that this land use plan, this projection of land use plan assumes full use of vacant land within existing city limits?

A No, it was not assumed for use of this land over in this area here in the foothills.

Q Was that within the city limits?

A Yes, it was.

Q But it assumes the use of the vacant land in here, that is in here?

A In the closer in, farther Northeast Heights, yes.

Q And the vacant land that was in there in 1964?

A Yes.

Q It assumes portions of that, is that right?

A Yes, except for the gravel extraction area.

(Continued on next page.)

Q And the dark brown assumes a density of more than six dwellings per unit, is that correct?

A More than six dwellings per acre, yes.

Q The dark brown assumes more than six units per acre?

A Yes.

Q And the lighter brown or the orange, if I may call it that, assumes three to six dwelling units per acre?

A Yes.

Q And that would be or would have been an increase in the then existing density as you knew it in Albuquerque on developed acres, would it not, three to six?

A If you are talking about total development, not just residential development, I think that would be true.

Q Density.

So it assumes the use of most vacant land, except for what is out here which you say is outside the city limits, and higher density, is that right?

A Second higher, yes.

Q And this is the projected configuration that you saw of Albuquerque?

A For that population.

Q And, of course -- could you show me north running from the center of the city so we can visualize the quadrants?

A North is from the top of the map -- north is at the top of the map and south is at the bottom of the map.

Q Did you the other day measure the east and west from the Santa Fe railroad lines?

A You mean the quadrants?

Q Yes, the quadrants.

A The Santa Fe railroad lines run more or less through here, on that line (indicating).

Q So that to the right of this ruler would be east and to the left would be west (indicating)?

A That's right.

Q And this would be the northwest quadrant (indicating)?

A North of Central Avenue and west of the railroad tracks.

Q And that was your visualization of the way in which Albuquerque would develop over the next 20 years?

A Yes.

Q Based on the assumptions we have given?

A Based on those population assumptions, yes.

Q Plus the use of vacant land?

A Right.

Q By the way, in talking about units per acre, am I correct that you were thinking of 3.6 people per unit?

A Yes. That was the number of people per household in the 1960 census, as I remember it.

Q So six units on an acre would be about 20 people on an acre?

A Yes.

Q Six dwellings.

By the way, this line right here at the top is the county line between Bernalillo County and Sandoval County, is that right?

A Right.

Q And Rio Rancho is right about in here (indicating)?

A That's right.

Q How many people worked on the preparation of the 1985 land use report?

I'm sorry, that's really not -- that's really not the question I want to ask.

On page iii, it says, "Current planning, George L. Carruthers, associate director," and there is a staff listed below that.

A Yes.

Q Are those the people that principally worked on the plan?

A No. They worked for me. I was not in charge of this plan effort.

Q Oh, you were not?

A The other planning section was the one which did this plan.

Q Were there four or five senior people who were in charge of this plan, essentially?

A Well, there was one. The other associate director was in charge of the plan and then there were some other senior people working for him.

Q And for how long did you work on this plan before it was published in 1964?

A Counting the land use survey, I think about two years.

Q And during that period of time, did you discuss the projections with the people with whom you were working?

A Yes.

Q Did you find any disagreement with regard to the ability to in fill vacant land within Albuquerque's city limits?

THE COURT: You mean among the planners?

MR. FLEMING: Among the planners.

A Well, there are a lot of variables, but --

Q Did you argue that point back and forth, whether vacant land could be in filled?

A Sure.

Q And did some of the planners have doubts that it could?

A I'm sure there must have been, but I don't recall that discussion.

Q But then it was finally agreed that you would go ahead and project as you did project assuming in fill of the vacant land within city limits?

A Yes.

Q Was there also argument about projected densities?

A I remember an argument about that and the concern was it was hard to calculate enough people to fill up the space that we had within the area. I mean, it was the other way around.

Q You mean, with 825,000 people you couldn't find enough to fill up the vacant land?

A That's right. And that's why there were some large blanks left within the boundaries of that plan area.

Q Was there any disagreement as to whether the people living in the Albuquerque area would be willing to live in a denser city?

A We were just beginning to get into a period when there was a bit more apartment development, and so -- still the town was basically single-family. Some people wanted it, some didn't.

Q My question was, was there any discussion or argument or disagreement about what ultimately became the projections for density within the city limits?

A I recall no -- no significant disagreement about those densities on the plan, no.

Q Is it fair to say that reasonable men could disagree with your projections as to the ability to in fill vacant land in Albuquerque?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Sustained.

Q Is the development of a planned community such as Rio Rancho --

MR. KAUFMAN: Objection, your Honor.

THE COURT: Don't you think he ought to be allowed to finish his question?

MR. KAUFMAN: I think he has already assumed a fact not in evidence.

THE COURT: Why don't you wait until he finishes?

MR. KAUFMAN: All right.

Q Is the development of a planned community such as Rio Rancho lying outside the city limits inconsistent with your plan for the development of Albuquerque?

MR. KAUFMAN: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q And one other question, if I might.

MR. FLEMING: With your Honor's permission, could Mr. Carruthers put one more mark on that mosaic, and that is to outline the Sandia Indian reservation?

THE COURT: Yes.

What color do you want him to use?

MR. FLEMING: Blue.

THE COURT: The witness whispered to go to you, Mr. Fleming. What was it?

THE WITNESS: I said, I don't know the boundaries of the Sandia Indian reservation. I just know where the south boundary is. I don't know where the north boundary is, unless somebody has a map.

THE COURT: He can't do it for you, then.

Q This line right here is the south boundary?

A Yes.

THE COURT: That looks green to me.

MR. FLEMING: It is green and blue, your Honor. It is black and blue.

Q Then it goes up north somewhere?

A Yes.

MR. FLEMING: I have nothing further.

Thank you, Mr. Carruthers.

THE COURT: You were only interested in the southern boundary, weren't you?

MR. FLEMING: It's hard --

THE COURT: You are not hurt, are you?

MR. FLEMING: No. By not having the northern boundary marked?

THE COURT: Yes.

MR. FLEMING: No, I don't think so.

Thank you, Mr. Carruthers.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Yes, I have a few questions, your Honor.

CROSS EXAMINATION

BY MR. LAVINSKY:

Q Mr. Carruthers, my name is Larry Lavinsky. I represent certain of the defendants here.

You were just talking about the Sandia Indian reservation.

Do you recall testifying yesterday that there was a small amount of residential development on the Sandia Indian reservation in the tramway area?

A Yes.

Q I direct your attention to Exhibit 60, which is the 1985 plan, under the heading "Indian Reservation" (handing).

That section in Exhibit 60 speaks of the Sandia pueblo and the Isleta pueblo Indian reservation, isn't that so?

A Yes, it does.

(Continued on next page.)

Q And the plan states with respect to them, that development by 1985 on either reservation would probably be limited and of a special nature, is that so?

A Yes.

Q And what example is given of development of a special nature? That is the tramway terminal approved on Sandia Pueblo at the base of the Sandia Crest, isn't that so?

A Yes.

Q You have been questioned at length about North Albuquerque Acres and I certainly don't want to belabor the issue.

However, so that the record will be complete, would you please state whether in September of 1975, your department published a document entitled "Legal Alternatives for the Reassembly of North Albuquerque Acres"?

A Yes, we did.

MR. LAVINSKY: Please mark this for identification.

(Defendant AMREP Corporation Exhibit EO marked for identification)

xxxxxx

Q I show youDefendant AMREP Exhibit EO for identification, and ask you whether this is the document (handing).

A Yes, it is.

MR. LAVINSKY: I offer it in evidence.

MR. KAUFMAN: May I see it?

(Handing to Mr. Kaufman)

MR. KAUFMAN: No objection.

(Defendant AMREP Exhibit EO received in evidence)

xx

Q Mr. Carruthers, doesn't this report conclude that there are substantial legal impediments to the development of North Albuquerque Acres?

A Yes, it does.

Q If you will take a look at page 6 of that document, doesn't it have a section beginning there in which it considers how development should proceed when viewed as if it were unplatted tract in single ownership? Am I correct?

A Yes.

Q And doesn't it recommend that the tract be divided into parcels or sections and that development proceed nearly to completion in one parcel or section before commencing development in the next?

A Yes.

Q And doesn't it cite Rio Rancho as an example of a development proceeding in this recommended manner?

A Yes.

Q Now, do you recall being questioned by Mr. Kaufman yesterday about the amount of vacant land presently within the city limits and testifying that there are approximately 15,500 acres of vacant land now within the city limits?

A Yes.

Q Isn't it a fact that only some 7,000 of these acres are zoned to permit residential development?

A Yes.

Q Do you recall testifying yesterday that more than half of the vacant land identified in Exhibit 55, which was your 1975 vacant land study, was classified as having secondary usability?

A In which vacant land study?

Q In the 1972 vacant land study.

A Oh, in the 1972 vacant land study?

Q Yes.

A Yes.

Q Secondary usability is defined in the study as having one or more of the following impediments, slope too steep for building without modification, close proximity to major arroyos, extreme vulnerability to flooding,

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ROBERT B. FISKE JR.
MAY 5 1977
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SO. DIST. OF N.Y.

by